

K323SCH1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

S2 17 Cr. 548 (PAC)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Trial

7 -----x

New York, N.Y.
March 2, 2020
9:00 a.m.

9 Before:

10 HON. PAUL A. CROTTY,

District Judge
-and a jury-

11 APPEARANCES

12 GEOFFREY S. BERMAN

13 United States Attorney for the
Southern District of New York

14 BY: MATTHEW J. LAROCHE

SIDHARDHA KAMARAJU

15 DAVID W. DENTON JR.

Assistant United States Attorneys

16 SABRINA P. SHROFF

17 Attorney for Defendant
-and-

18 DAVID E. PATTON

Federal Defenders of New York, Inc.

19 BY: EDWARD S. ZAS

Assistant Federal Defender

20 -and-

21 JAMES M. BRANDEN

22 Also Present: Colleen Geier

Morgan Hurst, Paralegal Specialists

23 Achal Fernando-Peirís, Paralegal

John Lee, Litigation Support

24 Daniel Hartenstine

Matthew Mullery, CISOs, Department of Justice

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Summation - Mr. Laroche

1 (Trial resumed)

2 THE COURT: The jury is here. You ready, Mr. Laroche?

3 MR. LAROCHE: Yes, your Honor.

4 THE COURT: Call the jury.

5 (Jury present)

6 THE COURT: Good morning. We'll start with the
7 summations now. Mr. Laroche.

8 MR. LAROCHE: Thank you, your Honor.

9 Joshua Schulte is responsible for the largest leak of
10 classified information in the CIA's history. These leaks were
11 devastating to national security. The CIA's cyber tools were
12 gone in an instant. Intelligence gathering operations around
13 the world stopped immediately.

14 The defendant did this because he was angry. The
15 defendant did this because he wanted to punish the CIA. The
16 defendant did this because he always has to win, no matter the
17 cost.

18 And after he got caught by the FBI, he tried to do it
19 all over again from prison, repeating that same pattern of
20 anger, escalation, retaliation, and lies. This time, declaring
21 an information war. An information war. The defendant's war
22 was about punishing the FBI, the very same way he punished the
23 CIA when he didn't get his way there.

24 We have proven these things to you beyond a reasonable
25 doubt in this case. These files on your screen, the March 3,

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1 2016, Confluence backup files that the defendant stole. These
2 are the backup files the defendant sent to WikiLeaks. These
3 are the backup files that WikiLeaks posted on the Internet for
4 the world to see. And these files, these files are your
5 starting point. Because from these files alone, you know the
6 exact date and time of the theft: April 20, 2016 at 5:42 and
7 5:43 p.m.

8 From that starting point you know it was the defendant
9 who stole these files. You know it was the defendant because
10 he was the one -- the only one -- who had the motive, the
11 means, and the opportunity to steal these files. You know it
12 was the defendant because the theft of these files followed
13 Josh Schulte's playbook. Whenever the defendant feels wronged,
14 time and time again, he retaliates, he declares war, he
15 punishes.

16 And by April 20, 2016, the defendant was a disgruntled
17 man, he was ready to retaliate, he was abusing his computer
18 privileges on a top secret security network, and he was lying
19 about it. The defendant was ready to harm the CIA, and that's
20 exactly what he did on April 20, 2016.

21 At 5:35 p.m. he broke into DevLAN. Minutes later, he
22 stole these files. And then he spent the next hour deleting
23 log after log after log of his activities, trying to cover his
24 tracks. The defendant took those backup files home with him,
25 and he sent them to WikiLeaks. Following WikiLeaks'

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1 instructions to a T. He downloaded Tails, a program to
2 secretly transmit data. And then when he was done, he
3 literally nuked his computer.

4 And now, defendant didn't just pick random files to
5 give to WikiLeaks. Those March 3, 2016 backup files meant
6 something to him, because March 3, 2016 was a really important
7 day in that man's life. That's when he realized that the CIA
8 wasn't going to just take his side against Amol. That's when
9 he realized the CIA was going to investigate, and they were not
10 going to tolerate unprofessional behavior, no matter who was
11 responsible, whether it was him or Amol. And that infuriated
12 him. So those March 3, 2016 backup files meant something to
13 him. The same files that were posted by WikiLeaks, the same
14 files that he stole on April 20, 2016.

15 So, how did we get here? Why did the defendant do all
16 these things? We are here today because he is an angry and
17 vindictive man. The evidence has shown in this case that the
18 defendant is someone who thinks the rules do not apply to him.
19 He thinks CIA's access rules don't apply to him. He thinks
20 classification rules do not apply to him. He thinks prison
21 rules do not apply to him. He even thinks that this Court's
22 own orders don't apply to him.

23 The evidence has shown in this case that the defendant
24 is willing to lie over and over again to try to get his way.
25 Amol threatened to kill him and his colleagues, lie; Jeremy

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1 removed his privileges without authorization, lie; Karen
2 ignored his security concerns about DevLAN, lie; the defendant
3 never brought anything home from DevLAN to his home, lie; the
4 defendant had nothing to do with the Vault 7 and Vault 8
5 disclosures by WikiLeaks, lie.

6 The evidence has shown in this case that whenever the
7 defendant feels wronged, he retaliates disproportionately.
8 Time and time again at the CIA, you saw this pattern. First it
9 was in response to Amol. Then it was in response to security.
10 Then it was in response to OSB libraries. Then it was in
11 response to losing his administrative privileges. At every
12 step, this man escalates and retaliates. And when his back was
13 against the wall, on April 20, 2016, he went nuclear, stealing
14 those backup files and sending them to WikiLeaks.

15 And that same pattern of escalation, retaliation, that
16 continued in prison when the defendant declared his information
17 war. When the defendant was planning to literally encourage
18 others to send their government's secrets to WikiLeaks. To
19 WikiLeaks. The defendant who is charged with sending highly
20 classified information to WikiLeaks believes that it is okay to
21 send more government secrets to WikiLeaks, if you feel like
22 your service isn't being honored. That's what he thinks.

23 But the defendant was caught redhanded again, this
24 time in prison, using an illegal cell phone, using encrypted
25 e-mail accounts, pretending to be a third person, sending

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1 classified information to a reporter, and planning to disclose
2 a whole lot more, including information about Bartender, a CIA
3 cyber tool. Information that, had the defendant disclosed it,
4 could have literally gotten people killed. The defendant
5 didn't care. He was prepared to break up diplomatic
6 relationships, close U.S. embassies, anything to bully the
7 government into dismissing this case. The defendant was
8 prepared to burn down the United States government, the very
9 same way he burned it down at the CIA when he didn't get his
10 way.

11 Josh Schulte is no patriot. Far from it. He's
12 vengeful and he's full of rage, and he's committed crimes that
13 have been devastating to our national security.

14 King Josh. That's what the defendant thinks of
15 himself. Well, King Josh got caught. And all of his lies, all
16 of his deceptions have come crashing down in this case.

17 Before I go any further, I want to talk for a moment
18 about the charges. Now, at the end of the closings you will
19 get instructions from Judge Crotty. You should follow those
20 instructions about the very various charges, but I want to give
21 you an overview so you can understand the evidence as I talk
22 about it during my closing.

23 So there are two categories of charges in this case.
24 The first relate to the Vault 7 and Vault 8 disclosures, so
25 what WikiLeaks disclosed. And, generally, what these charges

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1 relate to are the theft of classified information, those backup
2 files, unauthorized computer access to get that information,
3 and the transmission of that information to WikiLeaks. These
4 charges also include the defendant's efforts to lie to the FBI
5 and obstruct the investigation. That's category one charges.

6 Category two charges are the prison charges. And
7 these are two additional charges, one for transmitting and
8 attempting to transmit more national defense information, and
9 then the other charge is contempt of court for violating this
10 Court's orders by sending search warrants that were protected
11 by an order to the reporter.

12 So with that context, this is what I'm going to do for
13 the rest of the closing. Part one of the closing we're going
14 to go over the evidence related to the Vault 7 and Vault 8
15 charges. And, as you'll see, the defendant had a clear motive,
16 he had clear means and clear opportunity to steal this
17 information. And that's exactly what he did on April 20, and
18 then he sent it to WikiLeaks after that.

19 In part two I'm going to talk about the prison
20 charges. And there you will see the same pattern of
21 escalation, anger, retaliation, and lies. When the defendant
22 was in prison, he wanted to send more classified information to
23 a reporter, and he did so. And he was planning to disclose a
24 whole lot more using an anonymous Twitter account.

25 Finally, part three I'm going to talk about how the

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1 evidence fits together. I'm going to talk a little bit more
2 about the charges, and how the evidence you've seen over the
3 course of this trial proves beyond a reasonable doubt the
4 defendant is guilty.

5 So let start with part one, the evidence showing that
6 he's guilty beyond a reasonable doubt of the Vault 7 and Vault
7 8 charges. Here's a timeline. The timeline is
8 straightforward. Between October 2015 and early 2016, the
9 defendant becomes angry. He becomes angry for multiple
10 reasons. One, he's upset with management that they've sent one
11 of his tools to be built by a contractor. The defendant wanted
12 all the credit for that for himself. The defendant's
13 interpersonal issues around this time are also getting worse
14 with Amol, and we'll go over some of the evidence relating to
15 that. But he becomes furious with how security and management
16 responds to that situation.

17 By April 14, the defendant has said in his own words
18 that he's prepared to retaliate. Then he starts abusing his
19 computer privileges. Between the 14th and the 18th, he hacks
20 into DevLAN, he gives himself access back to OSB libraries. He
21 also, later on the 18th and 20th, does inappropriate things on
22 DevLAN, including stealing those backup files on April 20.
23 Between April 21 and May 6, the defendant continues his cover
24 up. He transmits the information to WikiLeaks, and again he
25 tries to cover his tracks, both at the office and at home.

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1 So let's walk through it. As I said before, e-mails
2 and witnesses have testified the defendant was becoming angry
3 between October 2015 and April 2016. And this culminated in an
4 e-mail to security on March 1st, 2016. An e-mail that was sent
5 just two days before those backup files were created, the
6 defendant stole. And the defendant was angry. And the
7 defendant accused Amol of threatening to kill him. And the
8 defendant wanted something done about that.

9 Now, as you saw from the evidence, the defendant felt
10 like he was being punished for reporting the security incident.
11 He also felt like nobody was taking it seriously. I submit to
12 you there is ample evidence that they took this seriously. TMU
13 investigated, local security investigated, SIB investigated.
14 This was taken seriously.

15 There is a reason that no one substantiated the claim.
16 The reason is he was lying. His claims made no sense on their
17 face. According to the defendant, in October 2015, Amol is
18 threatening to kill people, including him, but apparently he is
19 the only one who reports it. And then all of a sudden in
20 March, Amol threatens to kill him again. His story changes
21 multiple times, it's not substantiated by anything, so it is
22 not surprising that no one found any evidence that this
23 actually happened.

24 But, none of that means anything because we are not
25 here today to determine whether Amol made a death threat or

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1 not. We're here today to determine whether he stole highly
2 classified information, and the Amol situation is highly
3 relevant to that because the defendant becomes furious. He
4 becomes furious with how he is treated; he becomes furious that
5 people aren't taking his side.

6 And you know he was angry, because there are numerous
7 exhibits showing it. There are numerous exhibits where he says
8 I feel like I'm being punished. I feel like things aren't
9 being taken seriously. That includes e-mails sent to his
10 supervisors, to security, to TMU, to EEO, to the head of CCI.
11 At every step, he is angry. He is upset with how he's been
12 treated.

13 The defendant also sends an e-mail that he feels like
14 he was moved to an intern desk, whereas Amol was moved to the
15 more prestigious desk with a window. The defendant sends an
16 e-mail asking about resignation. And there is also testimony
17 from multiple witnesses that talk about his state of mind at
18 the time. He was upset. He was furious. And you also know
19 this from what was recovered from his home.

20 So a year later, in March of 2017, the defendant's
21 home is searched, and what are some of the things that are
22 recovered? Handwritten notes about this very specific
23 incident. Notes like this one about Sean. "After everything
24 was said and done, were you punished in any way for how you
25 handled the situation?" There are pages upon pages of notes

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1 just like this about Jeremy, about another individual Matt who
2 was in the branch, about Amol. He was furious. He was so mad
3 that he brought this stuff home and he kept it with him. Not
4 just handwritten notes, he kept e-mails. He shredded things
5 related to this incident, including that March 3 e-mail.

6 Not only did he just bring it home, he moved it with
7 him. And then you saw pictures of his apartment in New York.
8 There were things that still were not unpacked at the time this
9 apartment was searched, but you know what was unpacked? These
10 documents, these handwritten notes. And where were they put?
11 In the headboard of his bed. That's how focused, that's how
12 upset he was about this whole situation.

13 So by April 8, 2016, the defendant is ready to
14 retaliate. We're going to play a clip here from this SIB
15 interview of the defendant right now.

16 (Audio played)

17 MR. LAROCHE: "Whatever I have to do to shed light on
18 this and make this situation get resolved, I will do that."
19 That's his state of mind as of April 8, 2016.

20 And you also know that as of April 8, 2016, he is
21 still fixated on this high school counselor comment. The same
22 comment that appeared in that March 3, 2016 e-mail. He's
23 fixated on that day, he's fixated on the situation, and he's
24 ready to retaliate. He's ready to take any steps necessary in
25 his mind to make this situation right.

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1 What is the other thing he says during this interview?
2 He wants people to be punished. Let's play this next clip,
3 please.

4 (Audio played)

5 MR. LAROCHE: He's focused on punishment. He's
6 focused on punishing Karen. So by April 8, 2016, you've seen
7 escalation, you've seen more anger, you've seen him planning to
8 retaliate, and you've seen him wanting other people to be
9 punished, and that's just by April 8.

10 But things keep getting worse. On April 14, 2016, the
11 defendant does something that sets off red flags across the
12 agency. Remember, this is the day that the defendant learned
13 that he had lost certain privileges to a program, OSB
14 libraries, and he's upset about that. So he approached Jeremy
15 about it, and Jeremy said your privileges have been removed.
16 You are in a different branch, so your privileges have been
17 changed on OSB libraries. The defendant didn't take that
18 answer. He went to Sean, and he came back to Jeremy and said
19 Sean said it's okay, you can give me my privileges back. That
20 was a lie. Sean did not say that. Sean confirmed he did not
21 say that, it's confirmed in the e-mails. But, just to be sure,
22 Jeremy sent him an e-mail that day, and that e-mail was very
23 clear. It said you are no longer going to be an administrator
24 of OSB libraries. The defendant here responded to that e-mail.
25 He knew that he was no longer going to be an administrator of

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1 OSB libraries. On this e-mail are his supervisors. The branch
2 supervisors are on this e-mail. He knows he is no longer
3 supposed to be an admin of OSB libraries.

4 What does he do? Not to be stopped, because he wants
5 to win, after sending that e-mail, 20 minutes later at
6 4:05 p.m., he gives himself privileges back without
7 authorization, unilaterally, on a top secret, classified
8 security network. Defendant wanted something, so he took it,
9 because that's his playbook.

10 Here's the timeline. It's straightforward. On
11 April 4, he lose his privileges. On April 14, he e-mailed
12 Anthony, his supervisor, asking to continue administering the
13 libraries. At 3:59 p.m. Anthony says that JoJo would manage
14 the libraries. He never gives him authorization to
15 unilaterally reinstate his privileges. Six minutes later he
16 does it anyway. The evidence shows that. The testimony
17 supports it. But the clear documentary evidence shows that he
18 was lying, and he did what he wanted.

19 Now, this, as I said, was a huge red flag. We
20 often -- we've been doing this trial for four weeks and you can
21 lose sight of some context here. But remember where we are.
22 This is the CIA. This is a top secret computer network that is
23 available to about 200 people in the United States government.
24 200. Every single one of those people has a top secret
25 security clearance. This computer network is in a building

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1 that's guarded by armed guards. You need to badge into the
2 building, and then you need to badge into rooms that are
3 literally vaults to get to the computer network, because this
4 computer network stores some of the most sensitive information
5 that our country has. Information about cyber tools that are
6 used to target our adversaries, like terrorist organizations.
7 And the defendant decided that it could be up to him whether or
8 not he had access to certain programs. And that was a huge
9 deal.

10 As multiple witnesses told you, this was a huge red
11 flag, they had lost trust in him, and they were concerned that
12 he was going to misuse his administrative privileges, so they
13 took action immediately. On a Saturday, three individuals went
14 in for the explicit purpose of changing the administrative
15 rights on DevLAN. Their purpose was to take away his
16 administrative rights, so that he could no longer act as an
17 administrator on the system to any parts of the Atlassian
18 programs or any of the servers. They were trying to remove all
19 of his rights, but they missed some things. They tried, but
20 they missed some things.

21 One of the things they missed was a key, his key, on
22 OSB server. And this is a key that has a password on it which
23 is KingJosh3000. It's his key. It is the key he will use on
24 April 20 to help him steal this information, and so they missed
25 that. That was one of the back doors he would use on April 20

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1 to steal those backup files.

2 Remember, this is the network diagram. So just to
3 talk for a moment about the defendant's privileges prior to
4 these changes. Prior to that, he was an administrator of all
5 the Atlassian services. So he is an administrator of
6 Confluence, of Bamboo, of Stash, of Crowd, and of Jira. After
7 April 16, when the changes are made, he has none of those
8 privileges. He is not supposed to be an administrator of those
9 things. And that's important, because remember, the backups
10 are accessed by points on those virtual machines, so each one
11 of those services has a pathway to the backups. And the way
12 you get to that pathway is to log into those things as an
13 administrator. When he loses his administrative rights, he can
14 no longer do that.

15 And you know that, too, because on April 15, he had
16 tried to create a different pathway to the backups but he
17 failed. So this is the way he knows how to get there.
18 Remember, the defendant was the one who set up those mount
19 points, those pathways to get to the backups. After those
20 changes are made, he can't use those pathways anymore. He's
21 lost them.

22 As we go through this, this is what you have to be
23 focused on, this part of the network infrastructure as we go
24 forward, because this is what matters. He uses his
25 administrative privileges that are left over on this server,

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1 the OSB server here, to get back into Confluence on April 20.
2 We are going to walk through how he did this. But this is the
3 pathway that matters going forward. He reverts Confluence to a
4 time when he has access to those mount points again, and he
5 goes through that pathway to get back to the backups.

6 So April 18, 2016. So this is the Monday following
7 the changes of his privileges. Things continue to get worse.
8 In the morning, Mr. Stedman testified that the defendant was up
9 around OSB, up around that branch even though he was at a
10 different branch at the time. When he's there, he's upset.
11 He's upset because he had lost all his administrative
12 privileges and he's still upset about OSB libraries. Remember
13 Mr. Stedman told you that the defendant came up to him and
14 said, oh, it's okay, you can put me back in as an administrator
15 on OSB libraries. That's fine. It's been cleared. He lied
16 again. Because he was so focused on getting his privileges
17 back, he was willing to lie again.

18 That same morning, he meets with Anthony and he gets a
19 memo. Anthony gives him a memo about the change of privileges
20 he had with OSB libraries. And there's two portions of this
21 memo that I am going focus on. One says, "Individuals are not
22 permitted to personally attempt and/or renew their previous
23 authorization to any particular system. This is a direct
24 violation of trust, and a violation of agency policy." The
25 second portion is, "Please do not attempt to restore or provide

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1 yourself administrative rights to any project and/or system for
2 which they have been removed."

3 This is in direct response to his conduct with OSB
4 libraries. He had reinstated his privileges without
5 authorization after being told not to, and so that was a big
6 deal. They wanted to give him the memo to make sure loud and
7 clear that you cannot do these things. This included things
8 like trying to get your administrative privileges back for
9 Confluence, which is exactly what he would do two days later.

10 The defendant signed this. He understood this. And
11 quite frankly, it's common sense. You can't just go on a top
12 secret network and give yourself whatever privileges you want.
13 That's not how it works.

14 But on that same day, about 1 in the afternoon, the
15 defendant sends an e-mail to Anthony. It says, "I verified
16 that all private keys with access have been destroyed/revoked.
17 I'm curious with how suddenly everything occurred and without
18 notice to me. Since Patrick Schaeffer left a few years ago,
19 I've been the stuckie managing you all the resources and
20 ensuring the Atlassian products are updated, people have proper
21 access. It seemed like overnight literally all my permissions
22 within the products were removed and all my permissions on the
23 servers themselves revoked and all without anyone informing me.
24 Is there a reason to this sudden turnover that occurred without
25 my knowledge?"

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1 First, this e-mail reflects he is not happy about not
2 being told, because he thinks that management needs to inform
3 him before they take action. But there is a more important
4 part about this e-mail. These are lies. He is lying. He
5 knows when he sends this e-mail that he still has that back
6 door access to the server. He knows he still has access to OSB
7 server. He knows he still has the key that will allow him to
8 delete log files. But he sends this e-mail anyways, because he
9 doesn't want Anthony to know that.

10 And you know he can still login as an administrator to
11 that server because that's what he's doing throughout the day.
12 At 11:12 a.m. he logs in as root. At 1:47 p.m. he logs out as
13 root. He's doing this throughout the day. This is the
14 defendant. Mr. Leedom told you this is his IP address and
15 these logs specifically show he was the one logging in. He's
16 logging in.

17 There is another thing he's doing that day. On the
18 evening he is using that key that was left over, he is using
19 that session to view log files. He's doing reconnaissance.
20 Again, context here is important. This is OSB server. OSB
21 server. The defendant has been in RDB for weeks. He is not in
22 OSB. He has absolutely no reason to be doing any
23 administrative functions at all on the OSB server. But he's
24 doing it anyway, hours after he had lied to Anthony about his
25 accesses. He's doing it anyway.

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1 And we know that it was him doing those commands for
2 several reasons. One is that this 766 number, this is the work
3 ID number that was specifically assigned to this session. He
4 logged in, using his key, his private key that was left over
5 and password protected at the time. It's his IP address with
6 the login. This work ID is assigned to that, and it's
7 maintained on that work ID session throughout. This is him
8 doing it.

9 The other reason you know is because his unallocated
10 space has evidence of these commands being run. Remember
11 Mr. Leedom had told you about unallocated space, essentially
12 deleted space. What is it showing. Unallocated space is
13 showing essentially what he was looking at on his screen. Not
14 someone else's screen, not someone else running it, but what he
15 was looking at on his screen. That is recorded in the
16 unallocated space, and that's what's recorded here in the
17 unallocated space. Him running these same commands that show
18 up on server side, they are showing up in his unallocated
19 space.

20 You know for a third reason it was him running these
21 commands. On April 18, 2016, his badge records show that he
22 locked the eighth floor vault at 7:51 p.m. Remember there was
23 testimony about locking vaults, that means you are the last
24 person in the vault that day. Last person. At 7:44 p.m., he
25 runs VI shell log command, a command to essentially view and

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1 edit logs on the system. Minutes later he's locking the vault.
2 He ran these commands. You know he ran these commands because
3 it's his work ID session on his unallocated space, and he was
4 the last one that night.

5 Let's recap what happened on the 18th. In the morning
6 he is logging into that server as root, in other words as
7 administrator. At about 1 in the afternoon, he lies to Anthony
8 that all his permissions had been revoked. At 7:17 p.m. he
9 logged in again as root to the server. And then in between 6
10 and 7:44 he's using that key, that key that was left over, to
11 view log files as an administrator with absolutely no reason to
12 do so. He's not in OSB. He's not an administrator. He knew
13 that at the time. He was doing it because he was planning to
14 steal the information. He was looking at some of the very same
15 log files that he would delete two days later.

16 Let's talk about the day that he actually stole this
17 information. Now, at the beginning I focused on these
18 exhibits, and said they were very important evidence in this
19 case because they are your starting point. And I want to talk
20 through why they are the starting point for you. There are
21 several reasons.

22 On March 7, 2017, WikiLeaks posted these files, these
23 specific Confluence backup files. And you know that for
24 several reasons. One is that Mr. Leedom explained that the
25 information WikiLeaks posted must have come from backup files,

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1 because there was an error in the script at the CIA so certain
2 information that WikiLeaks got didn't include everything. So
3 there was user information missing, there was other things
4 missing that was included on what they posted. So you know
5 that what they got was backup files. Not something else, not
6 some other part of the system.

7 You also know that those specific backup files that
8 they posted on March 7, 2017, you know the date of those files.
9 Mr. Berger explained to you they are dated March 3, 2016.

10 So, from that last slide, those specific backup files
11 were posted on March 7, 2017. You know that. That's the date
12 of the files.

13 The other thing you also know is that no other backup
14 files that were stored in that server had a different date
15 accessed time to date modified and date created. Every other
16 one of those files had the same three, date created, date
17 accessed, date modified. There is a reason why this file is
18 different. The reason why this file is different is because on
19 April 20, 2016, he copied it. That's the only one that looks
20 like this. That's because that's the one that was stolen,
21 that's the one that was posted on the Internet.

22 There is another reason why April 20 is an important
23 day for him. On April 20, 2016, the defendant gets two
24 e-mails. Both e-mails essentially say the same thing, that
25 Confluence and Bamboo are going to be moved off OSB server.

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1 And that's important. Because once they're moved off the
2 server, the defendant can't use his admin privileges to that
3 server to manipulate those things, and that's what he uses on
4 the 20th to get back access.

5 Here is the first e-mail. This is from Jeremy Weber.
6 It is explaining that Confluence and Bamboo are going to be
7 taken off of OSB server and put on ISB server. And again, this
8 is important. OSB server at the time had Confluence and Bamboo
9 running on it. The defendant still had access as an
10 administrator to OSB server. He was still logging in as an
11 administrator, and it was those privileges that he used on the
12 20th to access Confluence, to revert it, to get his accesses
13 back. But if Confluence and Bamboo are moved, which they are
14 going to be on the 25th, then his server privileges mean
15 nothing anymore. He can't do anything with Confluence if it's
16 not on the specific server. So he knew he had to move fast,
17 and he did.

18 So here is an overview of what happens on the 20th.
19 Between 5:35 and 6:51 p.m., the defendant reverted Confluence
20 to April 16, 2016, to a time where he had complete
21 administrative control over all the Atlassian services,
22 including Confluence. A time when he could log into that
23 Confluence virtual machine and get access to those mount
24 points, that pathway to get back to the backups.

25 Minutes later, he steals the backups. You know that

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1 from those files that show that it was accessed literally
2 minutes later. And multiple witnesses told you that access
3 times will be updated if you copy them. If you copy them over,
4 they will be updated. And you know that at 5:42 and 5:43 p.m.
5 those access times are updated.

6 Now, the remaining hour he spends deleting log files.
7 Any log file he can find that's dated after 5 p.m., he deletes.
8 One after the other after the other, because he was trying to
9 cover his tracks.

10 Let's walk through it. What happens before the
11 reversion? As I said, there's two e-mails that are sent out,
12 one at 12:06 and one at 3:58 p.m. There are e-mails notifying
13 everyone, including the defendant, that Confluence will be
14 moved off that server. So he is going to lose his access to
15 that server and to Confluence.

16 At 5:18 p.m., the defendant accessed Rufus's key.
17 This is Rufus's key that he could use prior to April 16 to
18 login as an administrator. Rufus isn't in the building. The
19 defendant accessed the key. Why? Because he knows he's going
20 to steal information, and anything he can do to try to make it
21 look like someone else did it, he will do. So he accessed
22 Rufus's key which was stored, not in someone else's location,
23 not in someone else's home folder, but on the defendant's home
24 folder. He kept Rufus's key on his home folder.

25 5:19 p.m., the defendant connected a USB device into

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1 his workstation. At 5:29 p.m., he listed log files, and he did
2 this using that key that was left over that he lied about. At
3 5:29 p.m., the defendant created a snapshot of Confluence
4 titled bkup. You know it was the defendant, again, that was
5 listing the log files on that night because this is that work
6 ID session. The 766 number, this is his session, his IP
7 address, his key, his login. This is him.

8 Again, the evidence of these logins that we are
9 looking at right here are in the unallocated space. This is
10 what the defendant was looking at on his screen. He ran this
11 command on the server, it showed up on his screen because he
12 ran it. And it was stored in his unallocated space. Not
13 someone else's unallocated space, not some other computer. The
14 defendant's unallocated space. His eighth floor computer,
15 that's where this is coming from.

16 Here is the creation of the snapshot at 5:29 p.m.
17 These logs are VI client logs. This is not unallocated space.
18 These are logs from his workstation. And you will see in a few
19 minutes the defendant searches over and over again for VI
20 client logs. He's searching in the wrong place. But the
21 reason he's searching for them is because he doesn't want these
22 to be found either. He wants to try to delete these logs, but
23 he couldn't find them at the time.

24 5:30 to 6 p.m., at 5:35 p.m. the defendant reverted
25 Confluence to April 16, 2016. He then steals the backup files

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1 minutes later. He then begins deleting log files at 5:57 p.m.,
2 and after 5:57 p.m. he searches for the VI client logs. Let's
3 walk through these.

4 This is the reversion to that 4/16 snapshot to a time
5 when he had full administrative control of the system. Again,
6 these are VI client logs. These are logs that are on his
7 workstation. These are the logs that he is going to try to
8 find later on to delete.

9 Here is the evidence that he stole the backups. These
10 files are accessed literally minutes after he reverts the
11 system. So he reverts the system, he now has full access to
12 Confluence. Now he's got his backup backing up the backups, he
13 steals the files almost immediately.

14 The defendant at this point starts listing log files,
15 and the total there is approximately file size. But this is
16 from his unallocated space. This is what he is looking at on
17 his screen at the time.

18 Then the defendant starts deleting things. Over and
19 over again he starts deleting log files. And he's looking
20 specifically for log files that were modified after 5 p.m.,
21 after he started to do things on a system that he knew he
22 wasn't supposed to. After he started his plan to steal this
23 information. He's trying to get rid of anything that would
24 show what he is doing. This is in the unallocated space.
25 These are commands he ran that he was looking at on his screen.

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1 Here is the defendant after 5:57 searching for those
2 VI client logs, the logs that showed him creating the snapshot,
3 the logs showing him reverting the snapshot. He is looking for
4 those VI client logs. The reason he's looking for them is
5 because he knows they are really bad evidence for him. He
6 knows they are going to show exactly what he did. But he can't
7 find them because the way he's running commands right now, he
8 is looking in the wrong spot. He is looking on the server.
9 Those logs don't exist on the server. They exist on his
10 workstation. So he was trying to find them, he just couldn't.
11 That's part of the reason we have evidence left over, is
12 because he missed them. He couldn't delete them.

13 6 to 6:30, he continues listing log files, searching
14 for newer logs, deleting logs, and then listing again. You can
15 see the file size drops as he is doing this. The file size is
16 dropping because he's deleting things, things that would have
17 shown his activity on the system.

18 Here is 6:16 p.m. he is listing again log files. This
19 is, again, in the unallocated space. This is what is happening
20 on his screen in front of him.

21 At 6:16 he is searching for files that are newer than
22 VMK summary log. you can see just at the top of this exhibit
23 VMK summary was last modified at 2100 which is 5 p.m. He is
24 looking for logs that are newer than 5 p.m. because that's when
25 his activity started to steal this information. he wants to

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1 get rid of everything he can.

2 Then at 6:16 p.m. he deletes another log file,
3 hostd-probe.log. You can see that file was modified at
4 5:55 p.m., so that file had been modified during the reversion
5 while he was stealing things. He wanted to make sure he got
6 rid of it. Again, this is deleted space. It is unallocated
7 space. It is what is on his screen as he's doing these things.

8 After he deletes that, he lists more log files. You
9 can see the file size has gone down again. It went down
10 because he's deleting things.

11 From 6:30 to 7:00 he continues more deletions, more
12 listings. At 6:38 he deletes the VMware.logs. At this point
13 he's looking for log files in a different part of the server.
14 He is looking for log files specific to Confluence, because
15 that's the virtual machine he was manipulating, that's the one
16 he used to get back to the backup files to steal them.

17 At 6:51 p.m., the defendant reverts to that bkup
18 snapshot. Now, think about what the defendant had just done
19 here. Multiple administrators told you about the use of
20 snapshots. You use a snapshot if you're concerned that you are
21 going to make changes to the system, and if something gets
22 screwed up, you're going to go back in time. The defendant did
23 the exact opposite. The defendant created a snapshot titled
24 bkup, he then went back in time to April 16, 2016, to when he
25 had full administrative control over system. Then when he was

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1 done, an hour and a half later, he essentially went back to the
2 future, to bkup, that snapshot he created at the beginning.
3 Why did he do that? Because he wanted to cover his tracks, and
4 by doing it that way, he essentially deleted all of the
5 information on the virtual machine that he was doing at the
6 time. There is no reason to do that. There is no
7 administrative reason to do that. There is certainly no reason
8 for the defendant to do it after he had lost his administrative
9 privileges. There is simply no basis to do that, other than
10 him stealing something. And that's exactly what he was doing
11 at the time.

12 After he reverts to that bkup snapshot, he deletes the
13 snapshot. Then he lists log files again. There is a drop in
14 file size. The reason there is a drop in file size is he's
15 just deleted a very big snapshot of Confluence. Then he lists
16 more log files, then he deletes more log files from 6:56 to
17 6:58 p.m.

18 So let's walk through this for a second. By the end
19 of the reversion, and the end of all the log deletions, this is
20 what the defendant has done. Commands that would have shown a
21 copy command, deleted. Devices connected, logs showing what
22 would have been connected, like a USB device or a hard drive or
23 something like that, deleted. Auditing data, deleted.
24 Snapshot activity, deleted. Login information, deleted. All
25 logs after 5 p.m. have been deleted.

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1 The reason the defendant was so careful is because he
2 had just stolen highly classified information, and he didn't
3 want to be caught. But he didn't get everything. He didn't
4 get the unallocated space on his own workstation, and he didn't
5 get those VI client logs, and that's why we know what was left
6 over.

7 How do we know that this was the defendant? Well,
8 numerous reasons. Numerous reasons. At the most basic level,
9 as I've been talking about throughout the closing, these logs
10 were from his workstation. They are forensic files from his
11 workstation, from his unallocated space. The things he was
12 looking at on his screen, on his computer, on the eighth floor
13 at the agency, at the time. They're his files.

14 You also have some forensic files from the server that
15 match up to what he was doing. The example being like on
16 April 18 where you saw some things from the server, some
17 commands that were run. That match up to what's in his
18 unallocated space. But you have a lot more than that, too.
19 You have his password protected key that he used on the 18th
20 and 20th to view and delete log files. But you also have other
21 things that put him at his desk as these things are happening.
22 You have e-mails, you have Same Time chats, you have chats from
23 his actual DevLAN computer and you have his badge records.

24 Let's go through some of those. What about Same Time
25 chats. At 5:42 and 5:43 p.m., the defendant had copied the

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1 Confluence backup files. Three minutes later, he sends a Same
2 Time chat -- "When's gym." He misspelled when's -- to Michael.
3 Now, remember that individuals at the agency who were DevLAN
4 users had a DevLAN computer, and they had another computer that
5 had Same Time chats and e-mails. So the defendant is sitting
6 at his chair, using that Same Time chat to send a message to
7 Michael at the time. He is literally sitting in his chair to
8 do this.

9 But there's more. At 5:52 p.m., the defendant sends
10 an e-mail to Anthony. In this e-mail he's asking about
11 training. The defendant is doing this because he wants to act
12 like things are normal. Things are not normal. He is at his
13 desk, he's stealing files, and minutes after he steals those
14 files and sends this e-mail, he's listing log files and he is
15 deleting log files. He is at his desk at the time. He is at
16 his desk at the time.

17 But there's more. There's IRC chats. DevLAN IRC
18 chats are actually on his DevLAN machine. It means you know he
19 is looking at his DevLAN computer screen at the time he's
20 sending these chats. We have chats from 6:37 p.m. where he
21 messaged Michael. A minute later he deleted log files. At
22 6:51 he messaged Michael, a minute later he deletes the bkup
23 snapshot. He's sitting at his desk as these things are
24 happening.

25 Here's just one example. On the top here is a DevLAN

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1 IRC chat. This chat was taken -- was found on his workstation.
2 This is a forensic file taken from his workstation. And it
3 shows at 6:51 p.m., at 07 seconds, he says "I shall be" to
4 Michael. Ten seconds later, he reverts the snapshot to bkup.
5 Ten seconds after he sends that chat, he is reverting the
6 snapshot. He is at his desk. Not someone else, it's the
7 defendant.

8 And what about this LOL, sorry, Shane talked to me for
9 like 30 minutes, that's a lie. We just went through what he
10 did between 6:30 and 7. He is deleting log files, he is
11 listing log files, he is being very careful. He is not talking
12 to somebody else. He is taking his time to systemically delete
13 things. The defendant's at his desk.

14 You also know from badge records. So again, just like
15 on the 18th, at 6:58 p.m., the defendant deleted log files, and
16 then nine minutes later, he locks the eighth floor vault. Yet
17 again, the defendant is the last person in the vault, just like
18 April 18. The last person in the vault. He's in there because
19 he wants to do this at night, he wants to do this when few
20 people are there, and you know it was him doing these things
21 because he locked the vault that night.

22 What about the defendant locking vaults? Well,
23 interesting, the defendant locked the eighth floor vault two
24 times in 2016. Two times. April 18, and April 20. Because he
25 was stealing things. He was doing reconnaissance on the 18th,

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1 and he stole files on the 20th.

2 What about everybody else? Rufus, his badge records
3 show he's not even in the building. David, Tim and Jeremy,
4 other individuals who were administrators at times, left the
5 office before the reversion.

6 What about Michael? Michael, Michael's desk is on the
7 ninth floor. His computer, his DevLAN computer is on the ninth
8 floor. The defendant's computer is on the eighth floor. All
9 of those unallocated space logs we saw were on the eighth floor
10 computer. The defendant's computer. Between 6 and 6:28 p.m.,
11 Michael's not even on the ninth floor. He's not even at his
12 computer. He is on a completely different floor. It is
13 physically impossible for him to have done this. While he is
14 on the fifth floor, logs are being deleted. They are being
15 deleted by him. They are not being deleted by Michael.
16 Michael had nothing to do with this. Michael is never on the
17 eighth floor the whole time during the reversion, is never near
18 the defendant's desk. And during a key portion of the
19 reversion, he's on the fifth floor. He is not even near his
20 own desk, let alone the defendant's.

21 And now there's been, obviously, stuff about Michael.
22 He went on administrative leave. You've read the memo. You
23 saw them testify about it. You saw why he went on
24 administrative leave. He didn't go on administrative leave
25 because he was a suspect. The memo is pretty clear. He was

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1 the suspect. The CIA thinks he did it.

2 But all of that is a sideshow, because the CIA was not
3 in charge of the investigation. They were not the ones
4 investigating the case. The FBI was. You heard directly from
5 the case agents, Richard Evanchec, Evan Schlessinger. You
6 heard directly from the experts, Michael Leedom and Michael
7 Berger. Those individuals testified at length about the
8 investigation, about all the steps they took, about the things
9 they found out about Michael or David or other people, about
10 how they ran it down. Those individuals were in charge of the
11 case. Those individuals were in charge of reviewing things.
12 They talked about reviewing administrators' computers at the
13 agency. They talked about reviewing regular users' computers
14 at the agency. They were in charge of the investigation. Not
15 the CIA.

16 This Michael thing is a sideshow. These records prove
17 to you it could not have been him. It couldn't have been him
18 because he was not on the floor. Simple as that.

19 You also know it wasn't Michael or somebody else
20 because of what the defendant does in the following weeks. So
21 between the 21st and May 6, he sends the information to
22 WikiLeaks and he continues his coverup.

23 Now, the first thing he does on the 21st, so the day
24 after, the defendant gets to the office, he goes to the eighth
25 floor at 10:48 a.m. The first thing he does, minutes later, is

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1 to e-mail Anthony. He's e-mailing Anthony about the OSB
2 server. He wants to wash his hands of that server. The first
3 e-mail he sends the next day, we are going to look at it, is to
4 Anthony because he wants to try to cover his tracks. He is
5 concerned what he had just done the night before. So he
6 e-mails Anthony about it.

7 About an hour later, less than an hour later, that USB
8 device that had been logged in, he reformats it. Why? Because
9 he wants to make sure anything that was connected to his system
10 at the time is wiped. That there is no evidence on anything.

11 (Continued on next page)

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Summation - Mr. Laroche

1 MR. LAROCHE: Let's look at that email to Anthony.

2 Again, this is minutes after he gets to the office on
3 the 21st, minutes after he gets there. The subject is
4 "transfer of equipment, especially OSB server to OSB." He
5 says: "Not sure if this has been done already with my move to
6 RDB, but I had equipment that was registered under my name for
7 OSB -- notably, our \$30,000-plus server that I was custodian.
8 Probably low on your totem pole, but what is the process for
9 transferring this equipment to OSB and removing me from the CMR
10 and my access?"

11 The day before the defendant had used administrative
12 privileges on that server that he lied about to get access to
13 Confluence, to revert the system, to steal the files. And the
14 first thing he does the next day is to email his supervisor and
15 try to wash his hands of the server, because he's concerned.
16 He doesn't want his name associated with it. He's trying to
17 cover his tracks. And less than an hour after he sends this
18 email, he reformats that drive.

19 But the preparation continued over the following
20 weekend. Now, at this point, on the 22nd, the defendant had
21 learned a couple of things. He learned that Amol was appealing
22 his protective order, and he also learned that TMU had closed
23 its case against him. So on the 23rd he starts his preparation
24 to send this information.

25 On the 23rd, he prepares to delete Brutal Kangaroo

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1 with the Eraser Portable program, a secure program to delete
2 things. Remember, Brutal Kangaroo was a folder that was
3 located on his computer that was put in a queue to be deleted.

4 On the 24th, he ordered a SATA adapter for same-day
5 delivery, something that would assist him in transferring
6 information from hard drive to hard drive for transmission that
7 would not be connected to his computer. On the 24th, he also
8 downloaded Tails. This is the program we talked about earlier,
9 the program that WikiLeaks encourages individuals to download
10 to secretly transmit data. And the other thing he did between
11 the 23rd and the 28th was he added some encrypted files to the
12 queue for Eraser Portable: data2.bkp through data6.bkp. You'll
13 remember the defendant had encrypted files on his computer that
14 he named as data.bkp. These folders, these files, data2.bkp
15 through data6.bkp, were added to the queue for Eraser Portable.
16 You also know that these encrypted files were located on his D
17 drive, and we're going to come back to that in a moment.

18 Again, the defendant was following WikiLeaks's
19 instructions. He already had TOR. He already had that on his
20 home computer, but on the 24th, he got Tails. So TOR, there is
21 testimony that that allows you to visit websites anonymously,
22 and Tails is a way to secretly transmit data over the internet
23 anonymously. And WikiLeaks instructs folks to use TOR and
24 Tails in conjunction to make sure that you are not identified
25 when you send information to WikiLeaks. And that's exactly

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1 what he did on the 24th -- he downloaded Tails.

2 So the next weekend, the weekend of the 30th, more
3 transmission, more cover-up. First, he downloads Darik's Boot
4 and Nuke on the 30th. This is a program that irrevocably
5 destroys data, because he's preparing to wipe all of his
6 information. And on the 30th and into May 1 is when he
7 transmits this information, and you know that from his activity
8 on the home computer.

9 Just as a general matter, you know this information
10 was transmitted to WikiLeaks because they posted it on the
11 internet. They obviously got it, and the question is when did
12 he send it? And that's answered by what he did on the 30th and
13 May 1.

14 Let's look at the evening of the 30th.

15 At 6:47 p.m., he is searching for Google history and
16 Google view browsing history. He is concerned about what he's
17 been searching for. On the evening, that night, he is
18 searching for digital disk-wipe utility on several occasions,
19 and at 10:52 p.m., he visits a website Kill Your Data Dead With
20 These Tips and Tools. The defendant is interested in finding
21 out how to securely delete information that might connect him
22 to the leak, anything that he might've brought home with the
23 leak on it, anything that he might've used to transfer it.

24 And at 10:55 p.m., he runs a similar search for SSD
25 wipe utility. And you'll remember all those hard drives that

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1 were recovered from his home. He was wondering how to wipe
2 them to make sure that there was no evidence of his activities.

3 Now, overnight, he continues working.

4 At 12:19 a.m., the defendant mounted his D drive onto
5 his virtual machine, the same D drive that had those encrypted
6 files, data2.bkp through data6.bkp. They're in his D drive.
7 He mounts his D drive.

8 Then, overnight, he is constantly looking at his
9 computer. On at least four occasions, he is unlocking his
10 virtual machine in the middle of the night: 1:57 a.m.; 2:34
11 a.m.; 2:56 a.m.; 3:18 a.m. He is doing that because he is
12 transferring data and he wants to make sure it's happened
13 correctly. And you know that is the case because of the Google
14 searches he runs at of the end the night and the early morning.

15 At 3:18 a.m., just after he unlocks his screen saver,
16 the defendant searches for How Long Does It Take to Calculate
17 MD5?

18 Remember, calculating an MD5 is a way to confirm that
19 what you transferred from one place to another is the same,
20 that it went correctly, that there were no errors. You
21 calculate an MD5 to confirm that what you transferred
22 transferred correctly, and that's what he's looking for at 3:18
23 a.m.

24 Then at 3:21 a.m., the defendant visits a website, How
25 Can I verify That a 1TB File -- one terabyte file --

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1 transferred correctly?

2 Remember, there was testimony about how big the
3 Confluence backups and Stash backups would have been, the files
4 he stole on April 20th.

5 How big would they have been unzipped?

6 Close to a terabyte. Several hundred gigabytes of
7 information was the testimony. He's looking to see whether
8 that much information was transferred overnight into the wee
9 hours of May 1, 2016, less than two weeks after he stole the
10 information on April 20, 2016. That's what he's doing, because
11 he just transferred it.

12 What's the defendant do next?

13 Several days later, he reformats his computer. He
14 does that because he wants to hide any evidence of what might
15 be on the computer. He reformats it completely, which has the
16 effect of essentially making data unrecoverable from prior to
17 that time. And here again, these are WikiLeaks's instructions:
18 If you're going to send us data, you should remove any traces
19 of your submission. You should wipe your drives. You should
20 get rid of them. He is doing everything that WikiLeaks tells
21 folks to do.

22 Remember another thing about the defendant. When Mr.
23 Evanchec testified, he said that he asked the defendant about
24 rebuilding computers, and the defendant said, essentially:
25 Well, any time I rebuild a computer, I always wipe everything.

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1 I wipe it clean, and then I rebuild it that way.

2 There's a problem with that. Going back to 2006, the
3 only time the defendant searches for wiping utilities --
4 anything related to wiping hard drives -- the only time he does
5 that is late April and early May 2016; the only time, because
6 that's the only time that he transmitted highly classified
7 information to WikiLeaks. It wasn't about rebuilding
8 computers. It was about trying to cover his tracks.

9 And another thing. If he's reformatting his computer,
10 why is he transferring all that data before he does the
11 reformatting, if he was just reformatting it and not doing
12 anything else? Why, several days before, is he transferring
13 all this data? If he actually was just reformatting the
14 computer, he would have reformatted it and then transferred
15 data back onto it. He did the opposite because what he did
16 first was transmit the data to WikiLeaks, and then he wanted to
17 cover his tracks. And that's exactly what he did.

18 You also know that he sent this information to
19 WikiLeaks because of his web searches. The defendant sends it
20 in May, and it becomes clear that he's wondering where it is,
21 why it hasn't been posted. Remember, there was testimony about
22 the defendant's Google searches relating to WikiLeaks. Between
23 2006 and July 2016, he conducts three WikiLeaks-related
24 searches and visits nine pages. So over ten years, three
25 searches, nine pages. Between August and January, all of a

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1 sudden, he wants to search for WikiLeaks a lot: 39 searches;
2 115 pages visited. And the reason he's searching for WikiLeaks
3 is he's wondering where his stuff is. It's been several
4 months. It hasn't been posted, and he wants to know where it
5 is, and you see that from some of the searches he's running.

6 Let's look at a few of these.

7 One is WikiLeaks code. Now, around this time there
8 are other things being posted by WikiLeaks. Hillary Clinton's
9 emails are being posted by WikiLeaks. But there's something
10 that Hillary Clinton's emails don't have: source code. There
11 is no source code. He is searching for code because he's
12 wondering if WikiLeaks is going to produce some source code
13 because he has provided them source code, and he's wondering if
14 it's going to come out.

15 He also searches, on January 4, 2017, for "WikiLeaks
16 2017" and he visits a website: WikiLeaks Vows to Blow You Away
17 in 2017 Showdown. He wants to see what's coming out because
18 he's waiting. He had sent the information to WikiLeaks, and
19 he's waiting to see what comes out. Again, no searches prior
20 to July 2016. All of a sudden, in August to January, he is
21 obsessed with looking at WikiLeaks. The reason he is is
22 because he sent them the information and he's waiting for it to
23 come out.

24 Now, on this point, at the beginning of the trial, Ms.
25 Shroff said the timeline's not going to make sense, the

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1 government's timeline is not going to make sense. And the
2 defendant has no burden. We have the burden, and we accept
3 that burden. But when they do make arguments, you can
4 scrutinize them.

5 The timeline does make sense. You know why the
6 timeline makes sense? Well, first, because WikiLeaks is
7 publishing some things in August; through the summer, they're
8 dealing with Hillary Clinton's emails. But you also know, from
9 Mr. Leedom, that it would have taken them some time to get this
10 information published. Mr. Leedom told you that there was an
11 error in the script of the backups that were provided to
12 WikiLeaks, and so they couldn't just simply take those backups
13 and put them in commercial software and just see everything.
14 They would have to figure out how the data worked together.
15 They would have to figure out a script to get that data to be
16 published again, so it would have taken them some time.

17 Mr. Leedom said that he alone, in a lab, with computer
18 scientists helping him, with CIA officials who knew the data,
19 it took him -- him alone -- a week just to figure out how the
20 data worked together. That's just the starting point. They
21 would have needed to figure out a script. They would have need
22 to figure out how to get it put back together again. That
23 would have taken time, and that's why it wasn't published
24 immediately. Mr. Leedom explained that to you.

25 Another reason you know the defendant knew that this

K32Wsch2

Summation - Mr. Laroche

1 information was going to be coming out, and that's what he sent
2 on his last day at the agency.

3 Here's his email to OIG that he sent on November 10,
4 2016, and just to focus on a few portions of this, some of the
5 things he said:

6 Management ignored security concerns, his security
7 concerns, for two full years related to DevLAN;

8 It would have been easy to download and upload DevLAN
9 or the server in its entirety to the internet;

10 This illustrates the lack of security and pure
11 ineptitude of Karen;

12 Karen attempted to blame the insecure environment on
13 me.

14 More lies here by Mr. Schulte.

15 The defendant did not report security concerns for two
16 full years. You want to know how you know that? Well, Special
17 Agent Evanchec testified that he reviewed his emails and Same
18 Time chats, and there are no such communications. But
19 Mr. Schulte is also an individual who wants everything in
20 writing. Over the course of months, between October and early
21 2016, he is sending email after email after email about the
22 Amol incident, page after page of emails, writing down his
23 thoughts on the Amol incident. You know what's not in those
24 emails? Reports about security concerns, because he didn't
25 make them. He was lying.

K32Wsch2

Summation - Mr. Laroche

1 The defendant also claimed at the time, before his
2 resignation, that his punishment was based on the Amol
3 incident. It had nothing to do with him reporting security
4 concerns.

5 And another thing. The security concerns that the
6 defendant is reporting at the time are that developers are
7 acting as administrators. You know when that security concern
8 was fixed? April 16, 2016. They tried to fix the problem.
9 You know why that problem was fixed, what got it to be fixed?
10 Him. He was the security concern that they were trying to fix,
11 not something else, not something he reported. The idea that
12 the developers were administrators and that was a problem, that
13 came to a head because of what he did. That was fixed because
14 of what he did. He was the security concern.

15 So what is the defendant doing here?

16 He knows this information at some point is going to
17 come out, and he wants to try to cover himself by saying I was
18 the one; I was the whistleblower. He was not a whistleblower.
19 He was lying.

20 So the leak does come out.

21 March 7, 2017. Here is the Twitter post on that day
22 from WikiLeaks announcing the leak. What does the defendant
23 do? He immediately starts searching for things about the leak,
24 and not just anything about the leak; he is interested in the
25 investigation. So he searches, over a seven-day period, six

K32Wsch2

Summation - Mr. Laroche

1 times for the FBI -- six times for the FBI.

2 What types of things is he visiting? This is just on
3 March 7 alone, the day the leak comes out. The first thing he
4 is interested in is what is the FBI doing. He visits websites:
5 FBI Prepares Hunt for the Source of CIA's Documents; WikiLeaks
6 Reveals CIA Hacking Trove has Feds on Mole Hunt; FBI Joins CIA
7 in Hunt for Leaker.

8 Why is he interested in the FBI? Because he is
9 worried. He is worried that they're going to find him. He's
10 worried that they're going to figure out he did it. So the
11 first thing he's interested in finding is what is the FBI
12 doing?

13 Then he meets with the FBI, and he tries to do exactly
14 what he did at the CIA: lie. Because when he gets caught, he
15 lies without remorse, without hesitation. He did it over and
16 over again at the CIA, and he did it over and over again at the
17 FBI.

18 The things he lied about:

19 Deny being responsible for the leaks. He denied
20 having that classified OIG email. Remember, when he was asked
21 that question, Do you have that OIG email, that was before he
22 knew they were going to search his home. He lied. Why did he
23 lie? Because that email contains classified information, and
24 he knew he wasn't supposed to have it.

25 He denied taking information from DevLAN to his home.

K32Wsch2

Summation - Mr. Laroche

1 There is a chat that we read during Mr. Evanchec's testimony
2 where he says to someone he's talking to on his chats, I take
3 stuff from DevLAN and bring it home. I put it on CDs, and I
4 bring it home, and the individual that he's talking to responds
5 and says: I don't understand. We would get in trouble for
6 that. And he tries to clarify: You mean from an unclass
7 network? The defendant corrected him. He said: Nope. It's
8 from a class network. I put it on CDs and I bring it home,
9 because when the defendant wants to do something, he does it.
10 He doesn't care about the rules. He doesn't care about the
11 classification issues. He does it. But he lied to the FBI
12 about it.

13 The defendant denied working on Brutal Kangaroo at his
14 home, even though there's evidence that he securely deleted the
15 Brutal Kangaroo folder from his computer.

16 The defendant denied ever making DevLAN vulnerable to
17 a theft. But of course, he didn't mention that he bulk deleted
18 log files on April 20, 2016. He mentioned none of those
19 activities. The reason he didn't mention them is because
20 they're devastating evidence of his guilt. He didn't mention
21 any of that stuff.

22 But the defendant's lies didn't work, and the
23 defendant was caught. And after he was caught, he repeated
24 that same pattern. He got angry. He escalated. He
25 retaliated, and he lied some more, and he tried to cover up

K32Wsch2

Summation - Mr. Laroche

1 some more.

2 Again, at the beginning of this trial, Ms. Shroff said
3 that the prison conduct is going to show someone who was trying
4 to clear his name, that he was just trying to clear his name.

5 Again, we have the burden, but you can scrutinize
6 those arguments, and when you do, that argument does not add
7 up. Apparently, the defendant's idea of clearing his name is
8 to smuggle an illegal cell phone into prison; to use that
9 illegal cell phone to set up encrypted email accounts and
10 anonymous social media accounts; to pretend to be a third
11 person using those accounts; to accuse his CIA coworkers of
12 setting him up; to violate this Court's orders; to delete
13 activities of what he's doing in prison, activities that are
14 apparently supposed to exonerate him; to communicate with a
15 reporter as a third person; to tell that reporter that he is a
16 member of Anonymous or was a member of Anonymous -- Anonymous,
17 a group that has sent information to WikiLeaks in the past; to
18 send that information, to send that reporter classified
19 information about the CIA's network; to promise that reporter
20 that he will give him more information if the reporter
21 publishes things on a timeline that is OK with Mr. Schulte; and
22 then plans to disclose more classified information using an
23 anonymous Twitter account, including information about
24 Bartender, information that witnesses told you hadn't been
25 disclosed and could have put people's lives in danger.

K32Wsch2

Summation - Mr. Laroche

1 That is not someone trying to clear their name, ladies
2 and gentlemen. That is Mr. Schulte's playbook. Anger,
3 escalation, retaliation and lies. That's what that was.

4 Let's walk through the prison evidence.

5 Much like what happened at the agency, the timeline is
6 similar. Anger grows. He escalates. He retaliates. He lies.

7 The timeline here is in May. There's a court
8 appearance in this case, and the defendant is instructed very
9 specifically that he cannot modify the terms of the protective
10 order. And that protective order is clear: if something is
11 marked, pursuant to the protective order, as confidential, you
12 can't just disclose it to third parties. You can't do that.
13 The Court has issued an order saying you cannot do that on your
14 own, and the Court instructs the defendant about that and says,
15 Do you understand? And the defendant's response is, "I do
16 now." I do now. That's what he said to the judge.

17 By July, his anger had grown. You've seen a bunch of
18 prison-notebook writings where the defendant is very frustrated
19 with his family. He's frustrated that they're not doing what
20 he wants, which is to publish his articles. They are trying to
21 hold him back, but he does not want to be held back. He wants
22 to get his word out, and so he's furious with his family at
23 this time for not helping him.

24 By August, he gets that encrypted cell phone, the
25 Samsung cell phone. He declares his information war.

K32Wsch2

Summation - Mr. Laroche

1 By September, he has set up his Twitter account, and
2 near the end of the month, he emails the reporter classified
3 information about the network infrastructure, and he was also
4 planning to post tweets that contained more classified
5 information and an article that he wrote that contained more
6 classified information. And the only thing that stopped him
7 from doing that was the FBI. The FBI searched the MCC on
8 October 3 and stopped his plans.

9 Again, by August -- August 8, 2018 -- you know from
10 the prison notebooks that the defendant is furious. He's
11 furious with his family about his articles not getting out, and
12 he says that he is prepared to break up diplomatic
13 relationships, close embassies and end U.S. occupation across
14 the world unless his case gets dismissed. That's what he
15 wants. He wants his case to get dismissed.

16 And these aren't idle musings by somebody who couldn't
17 possibly cause harm to the agency or to the United States. The
18 defendant worked for years developing cyber tools. He was
19 involved in operations against foreign adversaries, against
20 terrorist organizations. The defendant knows information that
21 could be harmful, and you know that because just some of the
22 tweets he drafted about Bartender, witnesses told you that they
23 would never disclose that information, and that information, if
24 disclosed, could put people's lives at risk. So these were not
25 idle musings by him. He could do this, and his mind-set as of

K32Wsch2

Summation - Mr. Laroche

1 August 8 was I will do anything I can to get out of this case.
2 Anything I can to bully the government to dismiss my case, I
3 will do it.

4 By August 14, the defendant is prepared and has
5 declared his information war.

6 Now, the timing of this is not coincidental.

7 On the 13th, August 13, that's when the defendant gets
8 that Samsung cell phone, and Carlos Betances told you that he
9 wanted that specific cell phone because of the encryption on
10 it, because he felt like he could do certain things on that
11 cell phone that he wasn't comfortable doing on the other cell
12 phones. So the next day, after he gets this cell phone, he
13 declares his information war. This is, again, more evidence
14 that he was not trying to clear his name. It's more evidence
15 that he was trying to harm. He was prepared to harm the
16 government. He's prepared to do that by, in his own words, an
17 information war.

18 A week later, the defendant had already taken a number
19 of steps to set up anonymous social media accounts, to set up
20 encrypted email accounts, and the defendant has a checklist by
21 the 21st, August 21, that talks about the various things that
22 he plans to do, that he wants to do, and it is all more
23 devastating evidence that he was doing illegal things from
24 prison. He is trying to delete things from these accounts. He
25 is trying to, in his own words, "delete suspicious emails from

K32Wsch2

Summation - Mr. Laroche

1 my Gmail."

2 You don't need to delete suspicious emails if those
3 emails exonerate you, if those emails are about clearing your
4 name. You need to delete suspicious emails because they are
5 criminal, because they are illegal. That's what he was doing.
6 He's trying to protect himself:

7 "Create new ProtonMail presumedguilty@protonmail.com;

8 "Migrate WordPress to ProtonMail;

9 "Clean up apps;

10 "Reset factory phone" -- all steps he wants to take to
11 hide what he was doing, to prevent people from identifying him
12 as being the perpetrator: Encrypted email accounts, cleaning
13 the phone, setting the phone up to have encrypted applications
14 so he won't get caught.

15 He also says, at the bottom, "Set up WhatsApp app,
16 Signal, Telegram, all with different numbers." Why? Again, he
17 wants to make it harder to catch him. That's what he is doing.

18 On that same page he also has:

19 "Research.

20 "Gmail; delete deleted email."

21 He is concerned that Gmail might have those deleted
22 emails because they have evidence that he is committing crimes.

23 He also has "changing Samsung IMEI." He wants to try
24 and change the number that can be associated with the phone so,
25 again, he can protect himself; he can hide his activities.

K32Wsch2

Summation - Mr. Laroche

1 And he keeps escalating, just like he did at the CIA.
2 By the 22nd, the defendant reaches out to Shane Harris at the
3 Washington Post. He doesn't say I'm Josh Schulte. He pretends
4 to be a third person, and he asks for his nine articles.

5 The next day, he writes, in his notebook:

6 "My brother went back and forth, but they decided for
7 me not to publish the articles, my own fucking articles. Isn't
8 that incredible?"

9 Then later, he writes, "Yesterday I started emailing
10 Shane from the Washington Post."

11 There is really no doubt that the defendant is the one
12 who is doing this. He is admitting, in his prison notebook,
13 that I am the one emailing Shane Harris from the Washington
14 Post. And you know the defendant's emailing in the third
15 person because he knows what he's doing is wrong; he knows he
16 can't be doing it. But he's doing it anyways because he
17 doesn't care what his family says. He doesn't care what the
18 rules are. He doesn't care what the law is. He is going to do
19 whatever he thinks he has to do to make the situation right,
20 just like he did at the CIA.

21 On August 31, he emails Shane Harris again. This time
22 he says, "If you can consent to an embargo on disclosure of the
23 information for a limited time, we would give you an exclusive
24 to the information spanning several topics."

25 He's emailing a reporter, as a third person, enticing

K32Wsch2

Summation - Mr. Laroche

1 that reporter to publish, on his time frame, how he wants it,
2 and saying I will give you more sensitive information if you
3 take my leak, as a third person. That is not someone who is
4 trying to clear their name. That is not someone who is trying
5 to clear their name. That is someone who is doing something
6 illegal, who knows he is, and doesn't want to get caught.

7 The defendant also writes: "Secondly, I want to
8 rewrite article 10, Malware of the Mind." He also has
9 references to Anonymous. And he also has references to
10 classified information under which he has "tool for vendor
11 report, Bartender for vendor."

12 There's no doubt the defendant knows what he is doing
13 is preparing to disclose classified information. He wrote it
14 on the page. He's also referencing Anonymous, which he will
15 tell the reporter that he was a member of.

16 And here's Malware of the Mind. There's also no doubt
17 that this was intended for public dissemination. It is titled
18 "To My Fellow Engineers and the Tech Industry. That's on the
19 first page. And then he discloses more classified information
20 about his work at the CIA. He says:

21 "Do you know what my specialty was at the CIA? Do you
22 know what I did for fun? Data hiding and crypto. I designed
23 and wrote software to conceal data in a custom-designed file
24 system contained within the drive slack space or hidden
25 partitions.

K32Wsch2

Summation - Mr. Laroche

1 "I disguised data. I split data across files to file
2 systems to conceal the crypto. Analysis tools could never
3 detect random or pseudorandom data indicative of potential
4 crypto."

5 Witnesses told you that is classified tradecraft that
6 should not be disclosed. It should not be disclosed because
7 that is a way to determine whether the CIA has done something
8 in an operation. It's a way to attribute things to the CIA,
9 and that's dangerous. You cannot do that. The defendant
10 didn't care. He was prepared to do it in his article 10.

11 By September 1, the escalation continues. At this
12 point the defendant has set up an anonymous Twitter account
13 @freeJasonBourne, and the defendant starts drafting tweets.
14 And if you look at the evidence, the only tweets that appear
15 are under @freejasonbourne. There are several pages of them.

16 And what are those tweets about? Those tweets are
17 about accusing his coworkers about setting him up and hacking
18 the system. Those tweets are about other classified
19 information, including a tweet like this: "Just to
20 authenticate myself first."

21 What is the defendant planning to do?

22 The defendant wants to start an anonymous account that
23 is disclosing classified information, and he wants to
24 authenticate that account so that that person might know
25 something about what actually happened in this case. That's

K32Wsch2

Summation - Mr. Laroche

1 what the defendant thinks he can do to help himself, so he
2 starts drafting tweets about that:

3 I know Karen and Jeremy. I know those people set this
4 person up, and you can authenticate me because I have
5 classified information. I know about Bartender. I know it was
6 a tool that was deployed. I know it was by operators, and
7 that's how you can authenticate me. That's how you know what I
8 say about the defendant is true.

9 That was his plan. That's what he was drafting.

10 And you know that Bartender was a classified tool.
11 Multiple witnesses testified about it, that disclosing this
12 information could be harmful. It could put people's lives at
13 risk. Weber testified about that. Stedman testified about
14 that. And it makes sense. You cannot simply just tell the
15 world that this tool is a CIA tool and identify it with a
16 specific report. You are identifying a specific tool that had
17 been used. You can put people's lives in danger by doing that.
18 Again, the defendant did not care.

19 By September 2, the escalation continues. He sends a
20 Signal message, an encrypted message, to Shane Harris. Now, at
21 this point Shane Harris had not agreed to give him those
22 articles that he wanted so desperately.

23 And so what did he do?

24 As he always does he escalates, and he sent him a
25 Signal message that says:

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Summation - Mr. Laroche

1 "Hi. I got your name from Shane P. I'm messaging
2 from Josh's phone. I'm hoping to validate Anonymous
3 legitimacy, helping our family and authorize the release of
4 Josh's articles to them when you get the chance."

5 This group is apparently some computer group Josh was
6 a part of before.

7 "And they have agreed to switch from NYT, New York
8 Times, to talk to you instead to help us."

9 Again, he's trying to entice Shane Harris to do things
10 that he wants. He's trying to entice him with more sensitive
11 information and he's telling Shane Harris that he was a member
12 of Anonymous, a group that sent information to WikiLeaks in the
13 past. The defendant, charged with sending information to
14 WikiLeaks, is admitting that he was a member of a group that
15 sent information to WikiLeaks.

16 It's devastating evidence of his guilt. It also shows
17 the lengths he will go to try to get what he wants with this
18 report. He's promising more information if that reporter does
19 what he wants, which is to get his articles back, because he'll
20 do whatever it takes.

21 By September 12, he's already talking about disclosing
22 his tweets, scheduling his tweets. He's talking about getting
23 them ready for publication, and these are the only tweets that
24 you have. They're the tweets from the @freejasonbourne.

25 September 17, he is prepared to disclose more. He

K32Wsch2

Summation - Mr. Laroche

1 talks about posts he made on Facebook, and he says at the end,
2 "In a week I'm going to dump my stuff." He is getting ready to
3 disclose what he has.

4 What does he do in a week?

5 September 22, so we're about ten days away from the
6 FBI stopping him, he starts. He emails the reporter using
7 Annon ProtonMail account. He's still pretending to be a third
8 person, not himself. He says, "Attached are two of the search
9 warrant applications in Josh Schulte's case along with private
10 notes Josh wrote regarding the first warrant."

11 In that email he also says -- again, he's trying to
12 entice him to do what he wants by saying -- "I have more
13 sensitive information that we're ready to share with you. Just
14 please help me." Again, not the actions of a man who is
15 actually trying to clear his name:

16 "We've decided to share with you an initial exposé
17 involving Russian oligarchs, business ties and wire transfers."
18 He wants Shane Harris to do what he wants, and he's trying to
19 bribe him to do that by saying I'm going to give you more
20 sensitive information.

21 Now, on the 24th, he sends another email to Shane
22 Harris, and the reason he had to do that was because Shane
23 Harris couldn't access the search warrants and the notes. So
24 he resends it and he attaches them as a PDF. And in this email
25 he has now committed two crimes. He has now violated the

K32Wsch2

Summation - Mr. Laroche

1 protective order by sending this protected document to the
2 reporter, and he's also sent classified information to the
3 reporter about the CIA's network infrastructure.

4 He has done that in this email. You know the first
5 part of that because this is the search warrant application
6 that was attached to the email. It is clearly marked U.S.G.
7 confidential. U.S.G. confidential is the designation that's
8 identified in the protective order, and the defendant stood
9 before this Court and he said: I understand. I understand I
10 cannot do that.

11 He said it here, in court. He doesn't care. He will
12 say whatever he has to do, he will do whatever he has to do
13 whenever he thinks it's right, and that's clear evidence of
14 that.

15 The other thing the defendant sent was information
16 about the CIA's network infrastructure. He talks about EDG and
17 COG and at least 400 people with access, and he specifically
18 identifies Hickok. He says, "They don't include COG who is
19 connected to DevLAN through our network," an intermediary
20 network that connected both COG and EDG. He's sending this
21 information to a reporter.

22 To the extent the defendant thinks that he's got an
23 argument on that front, the way to air those arguments are in
24 this courtroom, not to send highly classified information about
25 the CIA's network infrastructure to a reporter so that he can

K32Wsch2

Summation - Mr. Laroche

1 get some sort of favorable article written about him that he
2 thinks is going to help his case. The way to deal with it is
3 in this courtroom. The defendant didn't care because, in his
4 view, he will do whatever he has to do, whatever it takes.
5 Whatever he thinks will make the situation right, that's what
6 he will do. And common sense will tell you that you can simply
7 not send information about network infrastructure to a reporter
8 or somebody outside the CIA.

9 Witnesses told you they would never talk about the
10 infrastructure of DevLAN, before the leaks or after. And the
11 reason they wouldn't is because you are giving information to
12 the public that could be used by adversaries to target our
13 systems, a system that, again, is only used by about 200 people
14 in the government, a system that has highly sensitive
15 information about cyber tools, a system that we use, that we
16 rely on for our national security. You can't just go tell
17 reporters about how that system is structured. He knows he
18 couldn't do that.

19 Another reason he knew he couldn't do that is because
20 he's communicating with this reporter as a third person. He's
21 not saying, Hey, my name is Josh Schulte and this is what's
22 happening. He is doing it because he wants to hide the fact
23 that he is committing crimes. That's why.

24 Now, at the beginning of this case, we talked about
25 this tweet, and this tweet specifically that he was preparing

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Summation - Mr. Laroche

1 to write, "Until your government protects you and honors your
2 service, send all your government secrets here: WikiLeaks,"
3 and this is what the defendant really thinks.

4 This is what the defendant really thinks. If the
5 government isn't honoring your service, it's OK; send your
6 government secrets to WikiLeaks. This is in his notebook.
7 It's his handwriting. It's his words. They're his thoughts.
8 That's what he thinks.

9 And you know who else didn't think people were
10 honoring his service at the CIA? The defendant. He was
11 furious that they took away his admin rights, that they didn't
12 take his side with Amol. He was furious. The CIA wasn't
13 honoring his service, so what did he do?

14 He sent information to WikiLeaks. This is a
15 devastating admission for him. This shows exactly what he
16 thinks about WikiLeaks. This shows exactly what he thinks,
17 that it is OK to send secrets there when you feel like you've
18 been wronged. And if there is one thing that is abundantly
19 clear, it's that he felt like he was wronged. He was ready to
20 retaliate, and he was ready to do anything -- anything -- to
21 make it right in his mind. That's exactly what he did at the
22 CIA, and that's exactly what he tried to do again from prison,
23 repeating that same pattern of anger, escalation, retaliation
24 and lies.

25 Now, the last part of the closing is going to be going

K32Wsch2

Summation - Mr. Laroche

1 back to the charges. I want to talk about each of the charges
2 very briefly, and remember that Judge Crotty is going to give
3 you instructions on the law, and you should follow those
4 instructions, but I expect that his instructions will include
5 some of this information. Let's go through the charges.

6 Count One.

7 Now, remember, at the beginning I told you that there
8 are essentially two categories. There's the Vault 7-related
9 charges and Vault 8, which relate to the stuff that was stolen
10 at the CIA, and then there's the prison charges. We're going
11 to start here with the first category, the Vault 7 charges.

12 Count One is illegal gathering of national defense
13 information. I expect that Judge Crotty will tell you that
14 this has three elements:

15 The defendant took information;

16 That information was national defense information, and

17 He took it with the intent or reason to believe that
18 it would injure the U.S. or it could be used to help a foreign
19 country. That's Count One.

20 Count Two is transmitting national defense
21 information. I expect that you'll hear the following elements
22 for this crime:

23 That there was unlawful access to information;

24 That that information was national defense
25 information;

K32Wsch2

Summation - Mr. Laroche

1 The defendant took that information with reason to
2 believe that it could injure the U.S. or help a foreign
3 country, and

4 That he willfully transmitted it, so he transmitted it
5 on purpose.

6 Count Four is unauthorized computer access to obtain
7 national defense information. I expect you'll hear that it has
8 these elements:

9 One, that the defendant exceeded his authority, his
10 access on the computer;

11 He knowingly did it, knowingly accessed the computer;

12 Three, he knew the national defense information could
13 injure the U.S. or help a foreign country and

14 Four, that he willfully communicated information to an
15 unauthorized party.

16 Count Five is theft of government property. I expect
17 you'll hear these elements:

18 One, that the property belonged to the United States;

19 Two, the defendant stole the property;

20 Three, that the defendant acted knowingly and
21 willfully; and

22 Four that that property was worth more than a thousand
23 dollars.

24 On that last point, you heard testimony from Sean
25 Roche about the millions and millions of dollars that's put

K32Wsch2

Summation - Mr. Laroche

1 into operations for the CIA, and there's really no dispute
2 that, obviously, the information that was stolen was worth more
3 than a thousand dollars.

4 Count Six is unauthorized computer access to obtain
5 CIA information. I expect you'll hear that the elements are:

6 That the defendant exceeded authority in accessing a
7 computer;

8 That he acted intentionally; and

9 He obtained information from the CIA.

10 Count 7 is the transmission of a harmful computer
11 command. The elements are:

12 The defendant transmitted a harmful computer command;

13 He intended to damage a computer system;

14 He thereby caused damage; and

15 His actions resulted in damage to that system.

16 Judge Crotty, I expect, will instruct you that damage
17 can include damage like the unavailability of data so that
18 deletion of data would be damage to a computer system, and we
19 saw that with the log deletions over and over again by the
20 defendant.

21 So there are a lot of elements we just went over, but
22 I want to try to break them down for these counts.

23 The two elements we saw for several of the counts were
24 national defense information and injury to the United States or
25 advantage of a foreign country. And here, we've just gone

K32Wsch2

Summation - Mr. Laroche

1 through both of those and summarized some of the evidence.

2 Let's start with national defense information.

3 What is national defense information?

4 I expect that you'll being instructed that it includes
5 the intelligence-gathering capabilities for our country, and in
6 order to be national defense information, the information has
7 to be closely held. It has to be protected.

8 What evidence do we have about that?

9 There really should be no dispute that cyber tools
10 used to target foreign adversaries, used to do
11 intelligence-gathering operations, used to collect intelligence
12 is national defense information. It's information about our
13 capabilities. It's highly classified information that should
14 be protected and, in fact, was protected. So it was closely
15 held in this case. You know it was closely held because it was
16 stored on a top-secret CIA computer system within a secret CIA
17 facility, protected by armed guards, accessed using special
18 badges and codes, inside offices there have vaults and only
19 about 200 people had access in the entire government to that
20 information. So it was closely held.

21 Injury to the United States or advantage of a foreign
22 country, whether the defendant understood or had reason to
23 believe or had intent that this could harm or would harm the
24 United States, obviously he did. The defendant here, in his
25 prison notebook, #fuckyourtopsecret, the defendant had a top

K32Wsch2

Summation - Mr. Laroche

1 secret security clearance. He knew the potential harm that
2 could come by disclosing this information. He even says in his
3 prison notebook, Vault 7 could be used in devastating fashion.
4 It could be repurposed, redeployed by our enemies against us.
5 He knew that this would be harmful.

6 The defendant also signed nondisclosure agreements
7 when he started at the agency. He signed those agreements
8 which said very clearly that disclosing classified information
9 could be harmful, could cause grave harm to the agency, could
10 cause grave harm to the United States.

11 You also know that there was real harm in this case.
12 The cyber tools were essentially gone instantly. Operations
13 were stopped, and you know the defendant was willing to do
14 anything because he said so himself: Whatever I have to do to
15 make this situation right.

16 When every step of his escalation didn't work, when
17 his back was against the wall, he was prepared to do anything
18 to make this situation right, including harming the United
19 States, including advantaging a foreign country.

20 So again, this slide shows several more of the
21 elements from left to right. On the left there is the
22 gathering and theft element, so that the information was
23 gathered and stolen.

24 In the middle there is unauthorized access, exceeded
25 authority and harmful command, so that essentially the

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Summation - Mr. Laroche

1 defendant had unauthorized access to the computer and he did
2 things he wasn't allowed to do.

3 And the third is transmission.

4 Now, before we go through each of these, at a very
5 basic level, you know that the information was stolen, and you
6 know it was transmitted to WikiLeaks. You know that because
7 WikiLeaks posted it. There's no question about this stuff
8 being taken and transmitted to WikiLeaks, so let's go through
9 each of these.

10 First, on the gathering and the theft, on the left
11 side, the defendant had a clear motive to steal. You know that
12 from all the emails. You know that from the witness testimony.
13 You know that from his interview with SIB. He was furious at
14 how he'd been treated. He was willing to do anything he had to
15 do to try to make it right in his own mind.

16 He also had the capabilities to do it. The defendant
17 was an administrator. He knew how the system worked. He had,
18 in his own words, "super access," and he also knew a lot about
19 the backups. He knew a lot about the backups because he set
20 them up, because he was managing them. He set up the pathways
21 that he would use. And remember, there is testimony. The
22 backups were not publicized at the CIA. Very few people knew
23 about them. He was one of the them. He had the administrative
24 capabilities necessary to access them.

25 You also know it was him from the March 3, 2016,

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1 backup files. Those are the files that are posted on
2 WikiLeaks. Those are the files from the worst day he had at
3 the agency, the day he became furious that the agency wasn't
4 going to take his side. He picked those specific March 3,
5 2016, backup files. You know it was those files from the
6 expert testimony. You know it was those files from the
7 forensic evidence, which shows that they were accessed and
8 copied on April 20, 2016. That is more powerful evidence that
9 he stole those specific files.

10 You also know from the April 20 forensics. So you
11 have forensics showing, again, from his workstation, his
12 computer, the reversion, accessing the backups and log
13 deletions, all things you would do if you were stealing that
14 data. And you know exactly when that data was stolen because
15 the last time it was accessed was April 20, 2016, at 5:42 and
16 5:43 p.m.

17 You also know it was him that gathered and took that
18 information because he immediately, the next day, tried to
19 cover his tracks. He emailed Anthony about the OSB server. He
20 wanted to try to wash his hands of that server. He was
21 concerned that if somebody looked at it and his name was still
22 in charge of it, he would get in trouble. The day after,
23 immediately, he tried to get rid of it.

24 What about unauthorized access and exceeding
25 authority?

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Summation - Mr. Laroche

1 Well, first, you have it is very clear that the
2 defendant knew what he was doing on the system from April 14 to
3 April 20 was wrong; that he was abusing his privileges. We
4 went through the timeline of the reinstatement of privileges on
5 April 14. He was specifically told he was no longer an
6 administrator of the OSB libraries. It did not stop him. He
7 went back in and reinstated his privileges anyways.

8 That led to April 18, 2016. After he had lost all of
9 his administrative privileges, he gets that privileges memo
10 which says you cannot do that, you cannot reinstate your
11 accesses. He also learns that day that he is no longer an
12 administrator of DevLAN, so he's not an administrator of the
13 Atlassian services, and he lied to Anthony about it because he
14 still had that back-door access, but he lied to Anthony because
15 he still wanted to use it.

16 And on April 20, 2016, he took advantage of that
17 access. He reverted the system. He accessed the backups, and
18 he did the log deletions. So again, all of this is more
19 evidence of unauthorized access, exceeding his authority and
20 transmitting a harmful computer code. He is deleting log after
21 log after log of his activities. That is making data
22 unavailable. That is damage to the system. That's what he was
23 doing.

24 And finally, on the transmission point, again, you
25 know that the data was transmitted, and you know that he stole

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Summation - Mr. Laroche

1 it. So what other evidence do we have on the transmission
2 itself?

3 You have all the steps he took concerning April 21 and
4 May 6 to transmit it and then to cover his tracks. On the
5 24th, he downloaded Tails, a program to secretly transmit data.
6 He purchased that SATA adapter which would have helped him
7 transmit data between hard drives outside of his computer.
8 Between the 23rd and 28th, he's using Eraser Portable to delete
9 Brutal Kangaroo, and he's trying to figure out what to do with
10 the actual files that he brought home with the backups. And on
11 the 30th, he downloads DBAN, something to nuke his computer,
12 which he will do after he is done sending the data.

13 And on the evening of the 30th into May 1, he is
14 taking all the steps to transmit the data, and that is exactly
15 what he's doing. He's trying to figure out how to wipe his
16 drives after it's done, and overnight, into the morning, he's
17 searching to confirm that one terabyte of data, the size of the
18 data that he would have stolen and given to WikiLeaks, had
19 transferred correctly. Multiple times overnight, through the
20 middle of the night, he is unlocking his virtual machine. He
21 is checking what is happening, and then he's trying to figure
22 out if the data that he sent over transferred correctly. He's
23 looking to see how can I calculate an MD5 to make sure that a
24 file has been transferred, large files like the backups.

25 And on May 5, days later, he reformats his computer,

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Summation - Mr. Laroche

1 and the reason he does that is because he wants to try to make
2 sure that there is nothing that can come back to him, nothing
3 that he did during that time -- no evidence -- will be left
4 over. He wants to make sure that he has protected himself in
5 every way possible.

6 You also know that he sent this information to
7 WikiLeaks because, all of a sudden, in August, through January,
8 he becomes obsessed with searching for WikiLeaks. For ten
9 years before that, he'd never served for WikiLeaks -- just
10 three times over that time period -- and then, all of a sudden,
11 from August to January, he is searching repeatedly for
12 WikiLeaks and things related to what they would eventually
13 disclose; WikiLeaks code. He wants to know what WikiLeaks is
14 coming out with because he knows they have it, and he's
15 wondering what time frame they will publish it.

16 Now, there are other counts related to the Vault 7 and
17 Vault 8 charges, and they are making false statements to the
18 FBI. I expect that you will hear that the elements are:

19 That the defendant made a statement;

20 The statement was material;

21 The statement was false; he made it knowingly and
22 willfully; and

23 The statement was made in a matter within the
24 jurisdiction of the government, like this investigation.

25 Count Nine is obstruction of justice. This has three

K32Wsch2

Summation - Mr. Laroche

1 elements:

2 That there was a proceeding pending before a grand
3 jury;

4 The defendant knew of that proceeding; and

5 He acted corruptly to obstruct or impede the
6 proceeding.

7 What's the evidence you have on this?

8 Well, first, you know that the defendant knew there
9 was a proceeding, a federal grand jury proceeding, because
10 during that first interaction with law enforcement, on March
11 15, he's handed a grand jury subpoena. So he knows that there
12 is a grand jury investigation. He's also searching for the
13 FBI, so he knows that there is an investigation relating to the
14 Vault 7 and Vault 8 disclosure.

15 So then what does he do when he meets with the FBI?

16 He lies over and over again. He lies about being
17 responsible for the leaks. He lies about that OIG email that
18 was found in his apartment. He lies about making computers
19 vulnerable to theft. He lies about storing information on his
20 home computer. He lies about working on Brutal Kangaroo at his
21 home. And he lies about removing classified information and
22 taking it home. You have evidence that all of those things are
23 lies.

24 The last two counts -- as I said, the last category --
25 are the prison charges. There is another charge here, Count

K32Wsch2

Summation - Mr. Laroche

1 Three, transmitting or attempting to transmit national defense
2 information. We went through these counts before, or these
3 elements before:

4 Unlawful access to information;

5 National defense information;

6 That information he had reason to believe could injure
7 the U.S. or help a foreign country; and

8 There was willful transmission.

9 This is also charged as an attempt, and to establish
10 an attempt, you have to show that the defendant intended to do
11 something -- so intended to transmit classified information --
12 and took a substantial step in doing so. Let's go through a
13 summary of the evidence on this count.

14 Here we have three columns -- national defense
15 information, transmission in the middle and attempted
16 transmission -- so let's walk through each of these.

17 On the left we have national defense information and
18 intent to harm. So again, the information that he was trying
19 to transmit or did transmit related was to CIA cyber tools.
20 They related to CIA tradecraft. They related to CIA network
21 infrastructure, things that plainly qualify as national defense
22 information, and multiple witnesses told you why.

23 (Continued on next page)
24
25

K323SCH3

Summation - Mr. Laroche

1 MR. LAROCHE: In terms of an intent to harm, the
2 defendant himself declared an information war. The defendant
3 himself was prepared to destroy diplomatic relationships and
4 close embassies. The defendant himself said fuck your top
5 secret.

6 He was ready to harm. He knew that this information
7 could harm, and he was prepared to do so.

8 The defendant also signed, on his way out of the
9 agency, non-disclosure agreements. Those agreements, much like
10 the ones he signed when he started at the agency, said if you
11 disclose classified information, it could harm. It could harm
12 the United States, and that's what he knew when he left the
13 agency.

14 What about transmission? What evidence do we have
15 that he sent this information to the reporter? Well, you know
16 he was using the cell phone. You know that from his own
17 statements in the prison notebooks. You know that from the
18 video of him using the cell phone. You know that from Carlos
19 Betances who told you he was using the cell phone.

20 You also know the defendant sent that e-mail to the
21 reporter. He said in his notebooks, he was the one who was
22 e-mailing with that reporter. You know that that specific
23 e-mail account, the Annon account, was the account he set up.
24 The password for that account is in his prison notebooks. He
25 wrote it down. He set it up. It's his account. And so

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Summation - Mr. Laroche

1 there's really no question that he sent this information to the
2 reporter, and that it was him who actually did it.

3 What about attempted transmission? So he attempted to
4 transmit two things: Bartender and Malware of the Mind.
5 What's your evidence here? You have the video of his using
6 that cell phone, so you knew he was using a cell phone. On
7 September 1st he set up that Twitter account, the Free Jason
8 Bourne account. He drafted numerous tweets under that Free
9 Jason Bourne account, tweets that he planned to submit. He
10 talked about scheduling the tweets. He talked about wanting to
11 get his articles published, including article 10, which is
12 malware. Malware was addressed to the tech community. It was
13 meant for the public. And he talked about dumping all his
14 stuff. He was planning to disclose this information.

15 He was doing it on a plan that made sense in his mind,
16 he was going to get the reporter to start publishing articles
17 about his case, and then there were going to be anonymous
18 tweets coming out and other information that would tend in his
19 mind to make him look like an innocent man. That was his plan.
20 That's what he wanted to do. That's what he was planning to
21 do.

22 Just days after, just days after sent to the
23 information to the reporter, he got caught. The FBI stopped
24 him. But had they not, he would have done it. He had
25 everything ready to do it. He had the Twitter account, he had

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Summation - Mr. Laroche

1 the cell phone, he had the tweets. He was ready. He was
2 prepared. He attempted to disclose that information.

3 Finally, last count: Contempt of court. The Court
4 issued a protective order that applied to the defendant. There
5 was clearly a protective order regarding discovery in this
6 case. Evan Schlessinger testified about that.

7 Two, that the defendant disobeyed that order.
8 September 24, the defendant sent an e-mail to the reporter
9 attaching the search warrant affidavits. That is disobeying
10 that order.

11 And third, that he acted willfully and knowingly in
12 disobeying the order. There can be no dispute here. The
13 defendant was in this courtroom where the judge said these are
14 the terms of the order, you cannot modify it on your own, you
15 need to come to court. He didn't care. He was here, he said
16 he understood, he didn't care. He sent it to the reporter, he
17 disobeyed that court order. This is a ground ball. He clearly
18 did these things.

19 Now, I'm getting ready to sit down. But before I do,
20 we're grateful for your time. This is now the fifth week of
21 trial. You guys have been very attentive throughout and taking
22 notes throughout. We're grateful for you sitting through five
23 weeks of what has been a long trial.

24 If you remember way back when to the beginning, when
25 Mr. Denton gave his opening statement, he asked you to do three

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Summation - Mr. Laroche

1 things. He said please follow the judge's instructions, please
2 pay close attention to the evidence, and use your common sense.

3 And I expect that one of the instructions that the
4 judge is going to give you is not to speculate, and you
5 shouldn't, and you don't need to. You don't need to speculate
6 about what happened in this case because you know exactly what
7 happened in this case. It's common sense, ladies and
8 gentlemen. Please use your common sense. Think what makes
9 sense, and what doesn't.

10 And you don't need to be a CIA officer to tell the
11 difference between a truth and a lie. And the truth in this
12 case is that the defendant lied repeatedly at the CIA. And
13 then he lied repeatedly after that to the FBI.

14 The truth in this case is that the defendant was
15 furious at the CIA, that he was prepared to do anything to get
16 back at them, that he abused his privileges, and on April 20,
17 he stole that information and sent it to WikiLeaks.

18 And the truth in this case is the defendant tried to
19 do it all over again from prison, repeating that same pattern
20 of anger, escalation, retaliation, and lies. Declaring an
21 information war. Sending classified information to a reporter.
22 He was doing all those things over again.

23 Because that's the defendant's playbook. That's who
24 the defendant is.

25 Now it's time to please use your common sense and come

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Summation - Ms. Shroff

1 to the only verdict that's supported by the evidence in this
2 case. The defendant is guilty as charged.

3 THE COURT: Thank you, Mr. Laroche. Take a short
4 recess. We'll resume at about 20 after 11 and we'll have the
5 summation by Ms. Shroff.

6 (Jury excused)

7 THE COURT: See you in 15 minutes.

8 (Recess)

9 THE COURT: You ready, Ms. Shroff?

10 MS. SHROFF: Ready or not.

11 THE COURT: Call the jury.

12 (Jury present)

13 THE COURT: All right, Ms. Shroff.

14 MS. SHROFF: Thank you, your Honor.

15 Mission above self. Mission above self. That's the
16 ethos of the CIA. You remember way back when, when Anthony
17 Leonis took the stand and told you this. Mission above self.

18 Throughout this trial, and way before, the CIA has
19 been on a mission and is on a mission here. With the help and
20 support of its two mission partners, the FBI and the United
21 States attorney's office, their mission was, their mission is,
22 and their mission remains, to get the 12 of you to convict
23 Mr. Schulte of espionage and other federal crimes.

24 But as jurors, that is not your mission. Your
25 mission, as Judge Crotty has told you, is to be impartial, to

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Summation - Ms. Shroff

1 decide only one thing: Did the government meet its burden
2 under our Constitution of proving Mr. Schulte's guilt beyond
3 all reasonable doubt. And the answer to that question is no.
4 No, they did not. They did not prove to you Mr. Schulte's
5 guilt beyond any reasonable doubt.

6 It's still morning, so good morning, ladies and
7 gentlemen of the jury. The last time I spoke to you directly
8 was almost a month ago, I think it was about a month ago. And
9 I said to you then, and I say to you now, the government has
10 simply not been able to answer even the most basic question in
11 this case. The most basic questions, ask yourselves, how,
12 when, why, where, and most importantly, who, masterminded and
13 perpetrated the biggest theft of data in the history of the
14 CIA.

15 And you know I was right to say that to you a month
16 ago. The government, hand-in-hand with the CIA, has
17 investigated this case for three years. Three years they
18 investigated this case. We've had four weeks of testimony, 18
19 witnesses, 1,200 exhibits, videos, audios, and -- let us not
20 ever forget -- a very, very long slide show. And what does all
21 of this add up to? I'll tell you what it does not add up to.
22 The government still is not able to answer for you the very
23 basic questions. In fact, quite weirdly, I tell you that there
24 are more questions now than when this trial first began.

25 So for the next hour or so I'm going to talk to you.

K323SCH3

Summation - Ms. Shroff

1 I'm going to try to be shorter here than the government has
2 been. I'm going to review the evidence for you. I'm going to
3 try and cut to the chase, get in, get out, because it's been a
4 long four weeks.

5 First, I'm going to look at how the CIA and the FBI
6 together decided almost immediately that the person to look at,
7 the person to focus on, the person to talk about, the only
8 person to present to you, was Mr. Josh Schulte.

9 Then I'm going to talk to you very briefly about the
10 DevLAN computer network. How it was the farthest thing from
11 being secure. Meaning that hundreds of people had access to
12 it. Hundreds of people could have stolen it, and we know of at
13 least one person, at least one person, Michael, the man the CIA
14 placed on administrative leave because of concerns about his
15 behavior and his truthfulness.

16 I'm then going to discuss the government's forensic
17 evidence, it's motive theory, what Mr. Schulte did and said
18 when he was locked up at the MCC, and finally we'll look at the
19 legal charges against Mr. Schulte and why the proof fails to
20 support them.

21 When we're finished, you will see that the only
22 correct, proper, and fair verdict is a verdict of not guilty.

23 So let's begin with the crime. The crime on March 7,
24 2017, thousands of CIA documents show up on WikiLeaks. This
25 was front page news as you've heard. And until then, until

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Summation - Ms. Shroff

1 that date, in 2017, the CIA had no idea that its crown jewels
2 had been stolen. All they knew was that WikiLeaks had started
3 releasing that information, and that more information was yet
4 to come. The CIA was under some pressure. I will say
5 tremendous pressure to find out what was leaked, how it was
6 leaked, and who leaked it.

7 They wanted to hold someone responsible for the leak.
8 And so they began immediately an investigation, an
9 investigation that focused on Mr. Schulte. The CIA joined up
10 with the FBI and started to work on their mission. And they
11 focused, literally, within days, they focused on the one man,
12 Josh Schulte, the man who had left the CIA in November of 2016,
13 on bad terms, and who was disliked at the CIA. So let's look
14 at what the investigation uncovered.

15 The FBI learned from working with the CIA day in and
16 day out over a period of three years that the CIA's DevLAN
17 network was highly insecure. You heard this from almost every
18 witness who took the stand, starting with the government's
19 first CIA witness, which was Jeremy Weber, until their last
20 main witness, which was Leonard Small. Each one of them told
21 you that DevLAN was wide open. There were no controls, there
22 were no user controls, users shared passwords, passwords were
23 weak, passwords were stored openly. There were no audit logs.
24 there was no login activity checks. Anyone could connect to
25 the DevLAN workstation computer to the internet just by taking

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Summation - Ms. Shroff

1 the ethernet cable from one computer and plugging it into the
2 other.

3 Almost every witness told that you DevLAN -- in fact,
4 almost all of them described it to you the same way. DevLAN
5 was the wild, wild west. Why? Why use that phrase? Because
6 it tells you the system is not locked down. And you don't have
7 to take my word for it. there are transcript, ask for them.
8 Their witnesses tell you DevLAN was far too open, it left the
9 CIA at risk, and literally every witness admitted that on
10 cross-examination.

11 Mr. Weber called it both the wild west and a dirty
12 network. Their next witness, or I don't know where in that
13 order he was, Dave, Dave told you the same thing and confirmed
14 that DevLAN was pretty open. You know that people on DevLAN
15 shared passwords. And not only did they share passwords, they
16 were extremely weak and simple passwords. What did that do?
17 It made it impossible to account for who was using the
18 password, and again, it left the system vulnerable. Because of
19 the openness of the system, anyone could have copied and
20 downloaded the data that was on Confluence by something called
21 vSphere. And simply carrying the data out the door on a hard
22 drive would not have been difficult. I didn't tell you that.
23 The CIA's witness tells you that, Dave.

24 Take a look at the transcript. The CIA admits this
25 over and over again and puts in its official WikiLeaks task

K323SCH3

Summation - Ms. Shroff

1 force report. They tell you, they confess and they say: We
2 cannot determine the precise scope of the loss because DevLAN
3 did not require user activity monitoring or other safeguards
4 that exist on our enterprise system.

5 These are not the defense's words. These are words
6 out of the CIA. "Day-to-day security practice had become
7 woefully lax. Most of our sensitive cyber weapons were not
8 compartmented, the CIA admits users shared system administrator
9 level passwords, there were no effective removable media
10 controls, and historical data was available to users
11 indefinitely." This is all in the exhibit. It goes on to tell
12 you, "The stolen data resided on a mission system that lacked
13 user activity monitoring, it lacked a robust server audit
14 capability," and then it says "The CIA did not realize the loss
15 had occurred until a year later, when WikiLeaks publicly
16 announced it in March of 2017. Had the data been stolen for
17 the benefit of a state adversary and not published, we" -- the
18 CIA -- "would still be unaware of the loss.

19 So why is it important here that Mr. Laroche went on
20 and on about DevLAN being so secure, and here you have a report
21 that tells you DevLAN was insecure. The bottom line is this,
22 right, bottom line is because the system was insecure, because
23 the system was poorly monitored, the government cannot know,
24 and it certainly cannot prove to you which of the many people
25 with access to this information committed this crime, when they

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Summation - Ms. Shroff

1 committed it, or how they did it. And they haven't even
2 touched upon foreign adversaries, nation states, non-state
3 actors, terrorists, they haven't even touched upon that.

4 Just think about it this way. It's like your home.
5 If hundreds of people have a key to your home, if you leave the
6 door open, if you leave your windows open, you always leave
7 your door and your windows open, you leave them unlocked, can't
8 anyone just come in at any time they want? Take your stuff,
9 walk out with it, and you'd never know it was gone until you
10 needed to use it again. You wouldn't know who stole something
11 from your house if you left your house that unlocked. And you
12 know who else doesn't know? The CIA didn't know, and they
13 don't know.

14 And it wasn't just DevLAN in general that we're
15 talking about that was insecure. You also know, and you heard
16 testimony about this, that the Altabackup, the Altabackup files
17 in particular were insecure. Remember that Mr. Laroche and the
18 government said over and over again, that this is the place
19 from which the information was taken. Well, you heard
20 testimony and the witnesses told you that the Altabackups were
21 not locked down.

22 Take a look at Dave's testimony. He tells you the
23 Altabackups were wide open.
24 "And in fact, you just testified that Altabackup was wide open,
25 correct?

K323SCH3

Summation - Ms. Shroff

1 "A. Yes."

2 And there were many ways to get to that Altabackup.
3 So if DevLAN and the Altabackups are not properly protected,
4 what does that mean to you? You already know this because
5 you've been here with me for four weeks. You know what it
6 means, it means that Mr. Schulte isn't the only person who
7 could have committed this crime. Others could have done it.
8 And if others could have done it, that is reasonable doubt.

9 Now first, remember who we're talking about, okay.
10 We're talking about people who work at the CIA. These are all
11 trained spies we are talking about. Witness after witness told
12 you that the CIA coders and developers are trained. What are
13 they trained to do? They're trained to gather, steal data from
14 air gapped networks without leaving any trace. That's their
15 expertise.

16 There are spies working for other countries who are
17 trained to do exactly the same thing. We are not the only
18 people who have a monopoly on this. Mr. Weber told you, the
19 CIA has two categories targets: foreign governments and
20 non-state actors. And they could do to the CIA exactly what
21 the CIA does to them. And he tells you that.

22 Take a look at the transcript at 169. Mr. Weber tells
23 you that the CIA creates malware that allows the CIA to steal
24 information, and he told you on cross-examination that other
25 countries are doing the same thing to us.

K323SCH3

Summation - Ms. Shroff

1 CIA contractors are another group. They are also
2 suspects. And you don't have to take my word. Think back to
3 Dave who testified here. He was a contractor. He was a
4 contractor for the CIA and what did he do? Just think about
5 what he did. He took a portable hard drive. Onto this
6 portable hard drive, he copied the entire backup of Stash. Ask
7 yourself, where is that hard drive? No one knows. Literally
8 no one knows. It has never been accounted for. Nobody knows
9 where that hard drive went. Ask yourself, is that how
10 WikiLeaks got the Stash information? I don't know. You don't
11 know. And that's reasonable doubt.

12 Mr. Leonis told you, when I told him or asked him if
13 he would be concerned to learn of such a sloppy security
14 practice, he said yes, he would be. He would be concerned if
15 someone put the backup of Stash on a hard drive.

16 But the FBI didn't seem particularly concerned about
17 it, and when I asked Special Agent Evanchec, what did he say?
18 He punted, and he said ask the Washington FBI office.
19 Actually, it wasn't me who cross-examined Mr. Evanchec, it was
20 Mr. Branden. When Mr. Branden asked Special Agent Evanchec did
21 the FBI ever find that hard drive, what did Special Agent
22 Evanchec say? He said, "I cannot recall. That was more of
23 Washington field office's domain. I can't specifically recall
24 where they ended up with that."

25 Let's flip over and go back to what Dave says about

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1 this hard drive where he has the entire Stash backup. Okay.
2 What does Dave say about the hard drive? First he says that he
3 put it in a safe. Now, he never said that ever before, when
4 the FBI interviewed him in 2017. But he tells us now from that
5 witness stand that he put it in a safe. And he got rid of the
6 safe. And then he moved the hard drive from the safe to his
7 desk cabinet. And from where in the desk cabinet it went, no
8 one knows. The entire Stash backup, according to Dave, the
9 contractor, is kept on a hard drive in a safe, then he gets rid
10 of the safe, moves it to his desk.

11 Can you imagine not keeping track of a hard drive that
12 has the backup of Stash on it? As though that's not bad
13 enough, as though the FBI has no answer for that, as though
14 that is not enough, what more does Dave tell you? He tells
15 that you not only did he put the backup of Stash on a hard
16 drive, he also put it in his home directory on the computer.
17 But he tells you, don't worry, you shouldn't be worried about
18 the home drive, because my home directory, he says to you, was
19 password protected.

20 So, Dave asks you to believe him, the man who could
21 not remember what he did with the hard drive of the entire
22 Stash backup. Is this what the CIA calls a secure system?

23 And just while I'm talking about Stash, I just want to
24 ask you one thing to think about. Where is the evidence that
25 Mr. Schulte took Stash? In all of the two-hour presentation,

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1 where is that evidence?

2 Now, you know that Michael here, Michael is a key suspect.
3 We are going to talk about Michael some more in a few minutes,
4 but for now, let me just remind you, he's present at his desk
5 in EDG at the very time the CIA information was stolen, and
6 that's according to the government's timeline. Not only that,
7 he's logged into vSphere, and the CIA itself found that he,
8 Michael, was too much of a security risk to be trusted around
9 classified information. That alone is reasonable doubt.

10 The government knows, the government knows that DevLAN and
11 Altabackups were not secure, and that many people, besides
12 Mr. Schulte, could be the real criminal. So what does the
13 government have to do to try and convince you about this
14 supposed science, the technical computer evidence that they
15 claim points to Mr. Schulte and Mr. Schulte alone. If you look
16 at the evidence, you'll see that it fails to support the
17 government's case, and in fact, it supports the defense.

18 And the key witness on this point, as you remember, was the
19 government's expert Mr. Leedom. Remember, he was the man who
20 said that he was an expert on DevLAN before he even started
21 working on the case. And you can look at that testimony,
22 because that's when he's trying to qualify himself as an
23 expert, and I asked him, hey, how could you be an expert on
24 DevLAN, when DevLAN was such a secure top secret system that
25 nobody ever had access to? And he told you he had worked on a

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1 system like DevLAN before, before he ever started working on
2 this case. He showed you a very long slide show about SSH
3 keys, computer reversions, passwords, and many other things.
4 But none of his testimony told you why it was so easy for Dave
5 to put Stash on a hard drive, and not inventory that drive
6 properly. Why not erase the hard drive, after migration of the
7 Stash is complete? Did Mr. Leedom tell you why? They have no
8 answer for that at all.

9 So let's look at what Mr. Leedom says, okay. He
10 claimed as an expert that the theft took place on a very
11 specific date. April 20, 2016. And also gave you a very
12 specific time. He said that Mr. Schulte reverted Confluence
13 back to April 16, and stole the March 3, 2016 Confluence
14 backup, and then he reverts back to April 20.

15 This is when I asked him to define or think about the
16 reversion period, and Mr. Leedom admitted, if you recall, that
17 according to the government's own theory, and you can check the
18 math here. This period, this reversion period, is about an
19 hour and 15 minutes, and that's when they want you to believe
20 that the theft took place. This is the moment of the heist so
21 to speak, right?

22 Look at what Mr. Leedom says on cross-examination,
23 because that theory, I tell you, does not hold up. I ask
24 Mr. Leedom a series of questions about whether he found any
25 evidence of a copy command during the reversion period. And he

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1 said he admitted that he searched high and low for a copy
2 command. I mean, how else are you going to copy data without a
3 copy command. I asked him, you really looked, you looked for
4 one, right? And he said, yes, I looked. And then he admitted
5 that the government had asked him to look. The government
6 wanted to find a copy command. He looked and he looked and he
7 never found any evidence of any copy command whatsoever.

8 And then what else does he tell you? He also told you
9 that he found no storage device. No thumb drive, no removable
10 hard drive, no drive. Nothing, nothing that was ever connected
11 to Mr. Schulte's workstation computer during the reversion
12 period. Nothing is plugged in.

13 That testimony is devastating to the government's
14 case. If Mr. Schulte never copied the March 3 backup file
15 during the reversion period, and if he had no device connected
16 to his workstation during the reversion period, and he never
17 took any device out of the CIA, he couldn't have stolen that
18 information. And if he couldn't have stolen that information,
19 he certainly couldn't have sent it to anyone, let alone
20 WikiLeaks.

21 And do not for a minute believe that they have any
22 evidence that this information went directly from the CIA to
23 WikiLeaks. They have never proven that to you. Now, you know
24 this is a giant hole in their case. And after I sit down, you
25 know Mr. Kamaraju gets to speak again and maybe he will answer

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1 it for you, but let's see.

2 Let's see if Mr. Kamaraju is able to tell you how did
3 Mr. Schulte copy the Altabackup files without leaving a copy
4 command anywhere? How did he download all those files without
5 connecting any device, any thumb drive, hard drive, anything to
6 his computer? How does he take this device out of the CIA
7 without anybody noticing? Mr. Laroche just told you there were
8 armed guards, you have to badge in, badge out, sit in a vault,
9 sit in a safe. How does he get it out? And maybe Mr. Kamaraju
10 will also explain to you why WikiLeaks waited almost a year,
11 not a week, like Mr. Leedom took to discombobulate the
12 information that Mr. Laroche would have you believe. A year.
13 Why would WikiLeaks wait a whole year to release this
14 information?

15 You know that they know. They know there is a problem
16 with their case. They know they have a problem here. And that
17 is why they have Mr. Leedom talk to you ad nauseam about that
18 thumb drive. He talks and talks and talks about that thumb
19 drive being connected to Mr. Schulte's workstation on April 20,
20 2016.

21 And you remember this. You remember the slide that he
22 showed you, slide 105, indicating that a Sandisk thumb drive
23 was connected to Mr. Schulte's workstation. You remember this
24 slide. I remember this slide because I had to read those long
25 numbers. And remember on cross-examination what we learned

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1 about this slide when I showed it to Mr. Leedom? The part that
2 he had cut off. He had cut off the bottom part. The bottom
3 that he cut off and that he never showed you. The part that
4 shows that Mr. Schulte pulled that thumb drive out of his
5 computer before -- I cannot emphasize this enough -- before the
6 reversion period started.

7 Take it back with you, take a look, the thumb drive is
8 disconnected at 5:22 p.m. Three minutes after it's connected,
9 26 minutes before the reversion starts. The reversion started
10 at 5:48 p.m. The thumb drive has nothing to do with anything.
11 Okay. You know it and I know it. Take a look. It's
12 disconnected, and I am repeating myself now, before the
13 reversion period ever starts.

14 Not only that, take a look at the thumb drive. It's
15 only 64 gigabytes in size. That's way too small. That's too
16 small to hold Stash and Confluence backup files. Which even
17 Mr. Laroche told you are literally hundreds of gigabytes of
18 data.

19 And lest we forget, because Mr. Laroche certainly did
20 not present that slide to you, the thumb drives has a write
21 blocker, something I also reviewed with Mr. Leedom, connected
22 to this.

23 All of this means what? All of this means that
24 Mr. Schulte couldn't have used that thumb drive to steal the
25 data. It had to be someone else, and maybe -- just maybe -- it

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1 is that someone who is home right now enjoying his paid
2 administrative leave.

3 Ask yourself this question. Ask yourself. If the
4 thumb drive has nothing to do with this crime, why did
5 Mr. Leedom talk about it so much? Why did Mr. Laroche talk
6 about it again today in his summation? Why did they not tell
7 you that the thumb drive is disconnected before the reversion
8 period? The answer is really very simple. It's not part of
9 the mission. That kind of testimony destroys the mission that
10 they are on. It might lead you, you, the jury of 12, to acquit
11 Mr. Schulte.

12 So Mr. Leedom never gives this to you in direct, and
13 he doesn't give it up until cross-examination. The testimony
14 about the thumb drive is to lead you to think that somehow or
15 the other this thumb drive has something to do and somehow
16 makes Mr. Schulte guilty. It does not. It does the opposite.
17 It should lead you to acquit.

18 Now, if Mr. Leedom were truly an objective expert and
19 did not have a three-year relationship helping the CIA with its
20 mission, would he not have just come here on this witness stand
21 and told you, hey, listen, I looked, I looked at all of this
22 evidence, I found this, this, and this, but you know what I
23 didn't find? I didn't find any evidence of any storage device
24 being connected to Schulte's workstation during the reversion
25 period. It's obvious. Why didn't he just tell you?

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1 And lest we forget, they've had Mr. Schulte's
2 workstation for years. His entire workstation, they had it.
3 What do they find? They look over his entire workstation and
4 they find nothing that is incriminatory. He's he deleted no
5 logs from his workstation, inserted no storage devices during
6 the reversion period.

7 I remember this testimony because it is only one of
8 two times that I got to ask a question on recross. And here's
9 the question that I put: The workstation that he used, not a
10 single file was deleted, correct? And look at his answer. Why
11 can't he just say yes. "I believe that's accurate." Supposed
12 to be an objective expert. Just answer yes. "I believe that's
13 accurate."

14 I also want to talk to you just a few seconds about
15 the document that the government keeps showing you, okay.
16 1207-27. The document that indicates that somebody accessed a
17 March 3 Confluence backup on April 20, 2016. I don't know how
18 many times they showed it to you. I think they showed it to
19 every witness they could find.

20 Let's just look at 1207-27. Because what this
21 document does not tell you, it simply does not tell you who or
22 which workstation is doing the accessing. It doesn't tell you
23 that. And you know why it doesn't tell you that. And you know
24 they tried to fill that gap, because David Denton in his
25 opening statement tried to get you to think that March 3

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1 somehow had some significance to Mr. Schulte, and that is why
2 March 3 was picked.

3 Now, remember Mr. Denton told you in his opening
4 statement that March 3, and I quote, "was the very day that
5 Schulte felt the CIA had wronged him, and that's why he decided
6 to access the March 3 backup file."

7 But I don't see anything in the evidence, and there is
8 nothing in the evidence to support this claim. Okay? There's
9 nothing at all to suggest that Mr. Schulte viewed March 3,
10 2016, as particularly significant, because Mr. Schulte never
11 mentions that date. The only people who somehow think March 3
12 is an important date are the prosecutors because it fits their
13 mission.

14 Second, I want you to remember that access is not the
15 same thing as copying. Just remember what the witnesses told
16 you. That the April 20 time stamp -- remember, they all told
17 you this -- that it stood out like a giant red flag. Because
18 it's the only entry where the numbers in the right column do
19 not match the numbers in the left column. Right? Can we pull
20 it back up.

21 So think about it. Mr. Schulte is a trained expert in
22 stealing computer information without leaving a trace, right?
23 That's literally his job. That's a job for which he won
24 awards. Why would he leave such an obvious red flag? Why
25 would he do that? You know he wouldn't. And how do you know

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1 that? Well, I want to show you and review with you a small
2 piece of testimony that nobody really focused on, but I think
3 is quite important.

4 Go back to Mr. Leedom again. Remember when I asked
5 him if he ever heard of something call a touch command. And he
6 said a touch command is a command in Linux that you can use to
7 create new files. You heard Mr. Leedom say: You can also use
8 the touch command to edit time stamps for files as well. And
9 what does that mean to you? It simply means by using a touch
10 command you can change or modify the access time. That's his
11 answer. The government's expert.

12 And you know from all the testimony in this case that
13 Mr. Schulte certainly was an expert in Linux. So if he's
14 really going to be stealing the data on April 20, and all he
15 has to do is use a simple touch command to change the April 20
16 access time back to March 3, 2016, he could have. It would
17 have looked just like this. That's your touch command. Look
18 at the date now. That's a simple touch command. It would have
19 looked just like this. The time stamp on the right column
20 would match the time stamp on the left column, with a simple
21 touch command.

22 So why would Mr. Schulte leave such a giant red flag
23 like this for investigators to find? You know he wouldn't
24 have. And that's how you know it wasn't Mr. Schulte. It
25 wasn't Mr. Schulte who did this.

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1 And I want to take a minute here to point out a
2 fundamental contradiction in the government's theory when it
3 suits them. When it suits them, they want you to think of
4 Mr. Schulte as this genius cyber criminal who can cover his
5 tracks up at will. And then there are other times when he's so
6 inept and such a bumbling data stealer that he's hunting on his
7 workstation and looking in the wrong place and that is why he
8 cannot find and delete VI client files.

9 So which one is he? Which one is it? Because you
10 can't be both, right?

11 Now, the government introduced for you a lot of
12 information about his home system. Mr. Berger testified
13 extensively about his home system and about
14 Mr. Schulte's Amazon purchases. Look, these are not Amazon
15 purchases that you and I would make. But for a computer geek
16 who is all into computers, all into movies, all into Plex
17 servers, those are very normal purchases, okay.

18 Now, think about the testimony you got from Mr. Berger
19 who tried to insinuate that the encrypted containers on
20 Mr. Schulte's home computer had something nefarious. It was
21 only later that when Special Agent Evanchec finally conceded
22 that you learned that none of the files on his home computer,
23 including the encrypted containers, had any classified
24 information in them. Mr. Berger didn't tell you that. It only
25 came out in Special Agent Evanchec's cross-examination.

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1 And go back to this point about Brutal Kangaroo.
2 There was nothing improper. There is nothing improper at all
3 about Mr. Schulte having a folder called Brutal Kangaroo on his
4 home desktop. And why do you know that? Because other people
5 from the CIA, other witnesses told you that people work on
6 unclassified portions of a project, of a tool at home, and take
7 it into the CIA. Is there any evidence, is there any record
8 evidence that shows you that anything in that Brutal Kangaroo
9 folder on his home computer has anything classified? No.

10 So you might be asking yourself now, Ms. Shroff, if it
11 wasn't Mr. Schulte, then who was it? And I just want to take a
12 minute to remind you, it is not our job to solve this puzzle.
13 It is not our job to solve this crime. It is not my job and
14 it's certainly not your job. That's the government's job. We
15 are not the FBI. We're not in the business of accusing.

16 But after all that you have heard, you have to ask
17 yourself, do you not, couldn't Michael have done this? And if
18 the answer is yes, isn't that reasonable doubt?

19 So let's talk about Michael just for a few minutes and
20 let's remember, first, who is Michael? Michael is the guy who
21 worked in EDG, he has the same skill set as Mr. Schulte. He
22 also knew, as did every other developer and coder in EDG, how
23 to covertly steal information without leaving any trace at all.
24 What else do we know? We know that Michael was present at the
25 CIA workstation on April 20, 2016, at 5:42 p.m., the very

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1 moment that the government says that the Altabackups were
2 accessed. And that's when the theft was committed, according
3 to them. That's called the criminal opportunity. And third,
4 Michael had a very easy way to copy the data by using vSphere.
5 As Dave told you, the easiest way to copy that data was to use
6 vSphere. Fourth, what program does Michael happen to have open
7 on his computer when the theft supposedly occurs? He has
8 vSphere open. And Michael is present at his desk at the
9 beginning and at the end of the reversion. No matter where he
10 is in the middle, at the beginning and the end he's at his
11 desk. At 6:51, Michael is back at his desk. Take a look at
12 the badge records.

13 And now things get a little bit even more weird, more
14 suspicious. Michael tells you that on April 20, he actually
15 sees the reversion taking place, right? You remember that he
16 came over and he said I saw the reversion taking place on the
17 computer screen. Not only does he see the reversion, he takes
18 a screenshot of the reversion, of what's going on, because he
19 says he found it suspicious. That's Government Exhibit 1255.
20 You find something suspicious, but you tell no one. And that
21 is not suspicious, according to the government. Okay, let's
22 just keep going.

23 Michael never tells anyone about this screenshot that
24 he takes. Never shows that screenshot to anyone. That
25 screenshot is never heard about again until the FBI finds the

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1 screenshot all on their own when it searches Michael's computer
2 in 2017. And then, when the FBI asks Michael what about the
3 screenshot, he just says I forgot.

4 Really? Do you really forget that screenshot? Is
5 that believable to you? Or is that somebody who has something
6 to hide, something they don't want to talk about.

7 So let's look a little bit more closely at the
8 screenshot, because you are going to find even more reasons to
9 suspect Michael. I know you've been here all morning, but I
10 ask you, I'll be fast, okay.

11 Remember the screenshot here, it has three screens.
12 Because Michael, no differently than anyone else at the CIA,
13 had three computer monitors. Look at the right screen of the
14 screenshot. This is the Confluence web page. And if you look
15 closely, at the right-hand side, you will see something kind of
16 curious, right. It is a whole bunch of passwords over there.
17 One of them is the password for the Confluence user account.
18 123ABCdef. That's like the weakest password. But you know
19 what? There it is. How do you know that's the password?
20 Well, the prosecutors stipulated to that in Defense Exhibit O.

21 Why in the world, just ask yourselves when you go
22 back. Why in the world does Michael have the Confluence user
23 password up on his screen at the very moment the government
24 tells you that the theft is taking place? Could it be that he
25 was logging into the Confluence to access the Altabackup? I

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1 don't know, they don't know, you don't know, but we all know
2 that's reasonable doubt.

3 Mr. Laroche told you that Michael couldn't have
4 accessed the Altabackups that way, right, this is what he told
5 you. Because Government Exhibit 1207-24 does not have any
6 record of any Confluence user logging into the Confluence VM at
7 any point in April of 2016. Right? This is what he wants you
8 to believe.

9 But look, you know this forensic fact to be true. The
10 reversion would have erased any such record. And Michael is no
11 more and no less a talented developer than all the others who
12 worked at EDG, and he would have known that. Mr. Leedom's
13 testimony tells you that, and he of course is the government's
14 witness. He told you in his testimony all the activity during
15 the one-hour reversion period was erased.

16 And that's different from the logs on Mr. Schulte's own
17 computer. They would not have been erased by the reversion,
18 only the logs on the Confluence VM are erased. So Michael, not
19 Mr. Schulte, could easily be the person who accessed and copied
20 the Confluence backup file, and leaked it. He could have,
21 that's reasonable doubt. You cannot convict Mr. Schulte for
22 something Michael had the capability, the ability, the
23 opportunity, to do.

24 And now you know what? It's not just me and you. It
25 is also the CIA who knows that Michael's behavior was highly

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1 suspicious, off the wall, off the charts, and you know that.
2 You know that by looking at Defense Exhibit L. This is the
3 official CIA memorandum, you remember this? Explaining why
4 Michael was placed on forced or enforced administrative leave.

5 Now this is a document, just take a minute, okay.
6 Remember? This is a document that the CIA never, ever, ever
7 wanted you to see. In fact, their mission partners, the United
8 States government, the FBI, all of these people at this table,
9 all of these men, never told you about this document, ever.
10 We're the ones who showed it to you. We are the ones who gave
11 you the document well after the government rested.

12 Judge Crotty will give you an instruction about this
13 document. It is called an adverse inference instruction. It
14 is about the government's behavior. Please, pay careful
15 attention to that instruction. It will tell you, the judge
16 will tell you, that the government did not disclose this
17 document to the defense until the middle of trial, in the
18 middle of their criminal trial. That it should have been
19 disclosed to the defense earlier. And that it is up to you,
20 you 12 jurors, to decide what weight to give to the
21 government's failure to disclose to you this document. It's
22 not just any document. It is an important document and you
23 should give the government's conduct that they withheld this
24 document a lot of weight.

25 The government, its mission partners, the CIA, the

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1 FBI, the United States attorney's office, kept this information
2 about Michael to themselves. Why? It shows their doubt. It
3 shows their doubt about the case against Mr. Schulte. And you
4 know this, I don't even have to belabor it. You know this just
5 by looking at this document, okay. I'm not going to go through
6 the whole thing again. But remember just in parts what it
7 says. It talks about Michael's lack of cooperation. His
8 unexplained activities on the computer system from which the
9 CCI data was stolen known as the DevLAN. It notes that it
10 raises significant concerns about Michael's truthfulness, his
11 trustworthiness, and his willingness to cooperate with both
12 routine OS reinvestigative processes and the criminal
13 investigation into the theft from his office.

14 The document goes on to say: Michael may have
15 additional knowledge of anomalies on the system at the time of
16 the theft.

17 Yeah, he had that vSphere running with the passwords
18 right there.

19 Additionally, recent inquiries indicate Michael is
20 still withholding relevant information concerning the
21 circumstances surrounding the theft.

22 You don't have to take my word for it. They tell
23 themselves, they don't tell us, but internally at the CIA.
24 They're in line with their mission, they know Michael is a
25 security risk.

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1 So what does the memo go on to say: "Given the
2 magnitude of the theft of the CCI toolkit and its concomitant
3 damage to national security."

4 This wasn't in Mr. Laroche's column. In the one, two,
5 three column, in any of those columns, did you see anything
6 about this memo? No.

7 "Views Michael's lack of cooperation as a significant
8 and untenable risk to the security of the operations on which
9 he now works and any new tools he deploys for CCI."

10 The government told you, and it's going to tell you
11 again, because this is in line with their mission, that it
12 could not have been Michael.

13 Let me just ask you something very simple. If it
14 couldn't have been Michael, and it wasn't Michael and Michael
15 isn't a person for you to worry about, why not just turn over
16 that memo? They didn't turn over that memo because it hurts
17 their mission and it gives you reasonable doubt.

18 So, if DevLAN is not secure, and there are other
19 people who could have done it, the forensic evidence is not a
20 smack down for them. It does not prove Mr. Schulte's guilt.
21 Michael's behavior is weird at best and suspicious.

22 What does the government do to further its mission to
23 convict Mr. Schulte? Well, you know. The government has a
24 special motive attributed to him. Deep anger. Over and over
25 again the government tells you Mr. Schulte stole the

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1 information and gave it to WikiLeaks to harm America. And
2 basically they spent four weeks trying to show you that
3 Mr. Schulte was so angry with the CIA, so angry with
4 management, that he decided to risk everything, everything, not
5 only himself but everybody else, he decided to risk the one
6 country that he loves, by leaking this information.

7 So let's look at Mr. Schulte, not for too long because
8 I know you look exhausted, but just for a minute. Let's just
9 talk about Mr. Schulte. He's devoted his entire life, entire
10 adult life, his work life to service. He started as an intern
11 at the NSA, he worked at the CIA. He went there as an intern,
12 loved it so much he decided to graduate in four years instead
13 of three. He was an award-winning developer.

14 And even when he was being interviewed by Mr. Small of
15 TMU, under all of that stress, when the government wants you to
16 think he is seeped in anger, what did he say. He described his
17 job as a lot of fun. Even then, he says his job is fun. He
18 cared deeply about his work, and he cared deeply about his
19 project. I don't see what's so bad about that.

20 You know he is a patriot. Mr. Laroche went on and on
21 about that. But think about what Mr. Schulte said at a time
22 when he was asked about Edward Snowden. He thought Edward
23 Snowden was a traitor who should be executed.

24 Jeremy Weber who is the last person, the smallest fan
25 of Josh Schulte that ever existed, what did he tell you? He

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1 told you that Mr. Schulte believed in the CIA's mission, and
2 that he thought he, meaning Mr. Schulte, that nothing ever
3 should be done against America, ever.

4 So they have to come up with some motive, right? So
5 what do they come up with? They come up with this story that
6 they want you to think that as of April and May of 2016,
7 Mr. Schulte was so angry, and now we have the anger portion of
8 their evidence. Now think back. Think back to every witness
9 that the government has called, and think about all the times
10 they've paused in the middle of their direct to say, And did
11 Mr. Schulte sound angry to you? How did he sound? Did he
12 sound angry? How many times of each witness did they ask that
13 question? You will have the transcript. Search for that
14 question over and over again. At one point the prosecutor even
15 changes the words. Take a look at this. Remember Michael
16 testified, "How did the defendant feel about Jeremy Weber after
17 he moved to RDB?

18 "He was unhappy with him.

19 "Generally speaking, what was the reason for that unhappiness?

20 "He -- there was an argument over a project. Josh wanted to
21 bring the project with him to the new branch, Jeremy did not
22 want him to bring that project.

23 "How do you know that the defendant was angry at Mr. Weber?"

24 He never says he was angry. Look back at line 7. He
25 says he is unhappy. When does unhappiness turn to anger? Only

K323SCH3

Summation - Ms. Shroff

1 when Mr. Kamaraju changes the adjective. Is it an adjective or
2 word? Whatever it is. It is only when he changes it. It is
3 not from the witness, it is from the government. The mission.
4 Remember the mission. The mission is to make sure you think
5 he's an angry, angry man.

6 Now, look, you have the testimony, you have the audio
7 recordings. Go ahead and play them. He doesn't sound angry to
8 me, okay. You can play the recordings. You can parse out
9 whether the man sounds angry, or he's recounting what is
10 troublesome to him. Clearly they want you to think that he's
11 angry, right. They focus on every part, every place that they
12 can find some way to convince you. They even tried to convince
13 you that the password phrase, which is chosen by WikiLeaks,
14 something about a Bay of Pigs, Splintering into 1,000 Pieces,
15 somehow or the other, that was chosen by Mr. Schulte because he
16 was angry, just as John Kennedy or Robert Kennedy was angry
17 during something having to do with Cuba. Okay. I don't think
18 so.

19 Go back, go back and look at that testimony and see if
20 your logical minds actually find any evidence that Mr. Schulte
21 was so angry in 2016, and that his anger continued unabated and
22 could only be satiated, only be satisfied by betraying the
23 United States.

24 Now, look go back to March 16, okay. March 16 he
25 files a complaint. Says Amol threatened to kill him. By

K323SCH3

Summation - Ms. Shroff

1 March 16 you know and I know that nobody is on his side.

2 Right. That's the evidence. Nobody supported him. Weber took
3 away his access. And according to the prosecutors, Mr. Laroche
4 here told you that Jeremy made him more angry. They went
5 through this with you with Exhibit 1060. I'm not, I promise
6 you, I will not go through that e-mail chain with you again.
7 But you take a look when deciding whether it's anger or just
8 Mr. Schulte who is fighting to keep what he thinks he should be
9 entitled to keep.

10 He's moved after that. Remember? He's moved. He's
11 moved out of OSB. He's moved to RDB. What does he do at RDB?
12 You know that he works on a new tool. He works on Nader.
13 Vortex is compromised. Remember, we had that whole testimony
14 about the uniqueness of the tool. Mr. Laroche wanted you to
15 think that Mr. Schulte didn't want to share any information
16 with the contractors, because he wanted to get the glory. And
17 we tried to tell you that that wasn't in fact the case. It was
18 a fair worry that the CIA's predecessor tool not share any
19 unique quantities with later tools. You know that.

20 They want you to think even those he's moved on, even
21 though he's happy working on Nader, there is still a lot of
22 anger and that is why he is a traitor.

23 Listen to the conversation he had with Mr. Small. I
24 think Mr. Small is far more of a liar than Mr. Schulte is
25 angry. Just take a look at the way Mr. Small answers

K323SCH3

Summation - Ms. Shroff

1 questions. Look at the way he answers questions on direct. He
2 never has a pause. It's like a seamless strain of question
3 answer, question answer, question answer. I ask him a
4 question, he couldn't recall, he didn't know, and then he kept
5 using that word, remember? I cannot answer yes or no because
6 it's too nuanced. Nothing was nuanced on direct. It was only
7 nuanced on cross-examination.

8 So, Leonard Small. Is he credible to you? Ask
9 yourself, read that question-and-answer series back.

10 (Continued on next page)

K32Wsch4

Summation - Ms. Shroff

1 MS. SHROFF: Anyway, let me go back just for a minute
2 to Mr. Schulte's suppressed anger or nonsuppressed anger,
3 because although Mr. Laroche would like you to think that the
4 timeline makes sense, it actually does not. So listen, go back
5 and look at the timeline and ask yourself, if, according to
6 them, the theft is in April and May, what does it matter
7 whether he's angry or not in June, July, August, September,
8 October, November? What does it matter? According to them,
9 it's all over by then anyway, right? So why do they keep
10 talking about anger all of these months from then?

11 And you know. You know that he's not angry in
12 November of 2016 because he's at Bloomberg by then. He's
13 moved. He's moved from Virginia. For God's sake, he lives now
14 in the best city ever, New York City. He's here. He's making
15 twice as much money as he ever made at CIA. He has a new
16 apartment. Yes, he's not fully unpacked, but he's a single
17 man. You know how that goes. And he's over it. He's moved.
18 He's moved on with life. The only person who hasn't moved on,
19 in fact, is the CIA and its mission partners over here. OK?

20 So let's fast forward because I know you're getting a
21 little tired. I can sense this from you. But let's move.
22 Let's move to the day that the FBI shows up at Mr. Schulte's
23 door. OK? That's March 15, 2017, and that's the day he's
24 stopped by the FBI agents and he's whisked off. Where do they
25 take him? To Pershing Square diner, right in the middle of

K32Wsch4

Summation - Ms. Shroff

1 42nd Street.

2 The agents sit him down, and remember you have
3 testimony about how orchestrated it is. On the one hand, they
4 want you to believe that he's free to leave, but then they also
5 tell you that they have agents at the front of the diner, that
6 they have agents pretending to be eating within the diner, and
7 then, of course, they have a table all the way in the back, and
8 that's OK to talk about national classified information at
9 Pershing Square diner. It's OK to do it then, because it's on
10 their terms, so that then it's just all all right, because it's
11 part of their mission. Don't forget.

12 And what does the special agent tell you? Is he
13 angry? Does Mr. Schulte answer their questions? Does he throw
14 a fit? No. He sits down, they ask him questions and he
15 answers questions.

16 And what does the agent tell you he remembers about
17 Mr. Schulte on that day? He remembers that his hands trembled.
18 Well, wouldn't your hands tremble too? Imagine you think that
19 that whole week that you're going to take your younger brother
20 for spring break to someplace in Mexico. I forget whether it
21 was Cancun or someplace else. And instead you're sitting in
22 Pershing Square diner being interrogated by the FBI. Of
23 course, they're going to tremble, but even that agent does not
24 tell you that Mr. Schulte was angry.

25 You know when there is some anger? The anger is after

K32Wsch4

Summation - Ms. Shroff

1 he's locked up at the MCC for a crime he did not commit. And
2 that's what the defense is. They have nothing. They do not
3 have any proof of these espionage charges. So what do they
4 give you? They focus over and over and over again on the MCC
5 evidence. OK? And they focus on his writings. And they seem
6 to think that his writings will take the place of actual proof
7 of theft. So let's look at these writings, because I think
8 that they prove Mr. Schulte's innocence. You have them in
9 evidence.

10 I know you're tired. You read them and you will
11 remember the circumstances under which Mr. Schulte writes them.
12 OK? For by this time, he's been in prison for a while. Right?
13 He's deteriorating. It's clear. I mean, Mr. Betances might
14 think that prison is a nice place, but you know it's not. He
15 tells you about the rats. He tells you about the flooding. He
16 tells you about the water being backed up with sewage. It is
17 not a place that anybody wants to be.

18 So compare. Compare his prison writings to the way he
19 writes at the CIA, and you can see he's falling apart. But
20 what does the government want you to believe about these
21 writings?

22 The government wants you to believe this is some kind
23 of planned army-like information war against the United States.
24 Just compare what the United States wants you to think about as
25 this information war and what the information war actually is.

K32Wsch4

Summation - Ms. Shroff

1 So I promise no articles other than the titles. Just take a
2 look at the titles of these articles. OK?

3 Presumption of Innocence.

4 A Petition for a Redress of Grievances and the Loss of
5 Citizenship.

6 Do You Want to Play a Game?

7 Detention is Not Punishment.

8 Guilty Until Proven Wealthy.

9 Presumption of Innocence: Its Origins.

10 Does this sound like a battle plan? Is that what he
11 called it, a battle plan? Does this sound like a battle plan
12 to you? That's not a battle plan. This is what Mr. Denton
13 called it in his opening, a battle plan. If our battle plan is
14 talking about the United States Constitution and presumption of
15 innocence, then we're all in big trouble.

16 Mr. Schulte's focus here is not about anything other
17 than trying to prove that he is an innocent man sitting in
18 jail. That's what his plan is. Right? He wants to get out
19 because he's innocent. So what does he do? Yeah, he uses a
20 cell phone, a cell phone that was smuggled in, and he uses it
21 to try and get his story of innocence out to the Washington
22 Post. He tries to get it out to the Washington Post and to
23 anybody else who will listen to him. And that is what he does
24 with the search warrants. He writes out why he thinks the
25 search warrants are false, and that is what he's trying to get

K32Wsch4

Summation - Ms. Shroff

1 out.

2 Look, I'm not going to stand here and tell you that
3 using a cell phone in a prison is right. It's not. It's
4 against the rules. It's not in keeping with the prison rules.
5 Did he use a cell phone? Yes, he used a cell phone, but that's
6 not what he's charged with. If he was charged with using a
7 cell phone, sure, find him guilty of that. But that is not
8 what he's charged with. He's charged with far more serious
9 crimes here, and they have no proof he committed those crimes,
10 which is why they are so focused on MCC conduct. They want you
11 to focus on MCC conduct because that is the only way they can
12 get you to think that he did the other crime.

13 They want you to think that this guy -- Mr. Laroche
14 told you this. He told you that they want you to think of this
15 man as a man in perpetual trouble, who broke the rules at the
16 MCC, and therefore, because he broke the rules at the MCC, he's
17 the kind of guy who would leak national defense information.

18 Just for a minute take a look at what he says. Take a
19 look at what he says in these articles. And just for a second,
20 take a look at the first paragraph of Malware of the Mind. OK?
21 See if this is what you would have in your head if you're
22 trying to betray your country.

23 What is he talking about?

24 "Today we are facing a stealth constitutional crisis.
25 A malware of the mind has entered and corrupted the justice

K32Wsch4

Summation - Ms. Shroff

1 system."

2 What is he talking about? He's talking about the
3 justice system. From there, Mr. Schulte goes on to talk about
4 the justice system in the context of technology, how the law
5 does or does not progress with technology and how these
6 prosecutors and the FBI agents, with very little knowledge of
7 forensics, are deemed experts. He is talking about how wrong
8 this is, how somebody who has no real expertise is so trusted
9 to defeat the presumption of innocence, and it is in this
10 context -- it is in this context -- that he talks about his
11 work at the CIA.

12 So go back to exhibit 801. Take a look at the
13 contents of this. Take a look. Just take a look at the
14 contents. OK? Look at the contents. You can't read this
15 whole thing. It's 133 pages long:

16 Introduction; transcripts -- certainly not part of a
17 battle plan, right?

18 Search warrant, not part of a battle plan.

19 The complaint, not a battle plan.

20 Ethics and a logical look at the charges; tyranny;
21 conspiracy; and conclusion.

22 It's not a battle plan. This is a man talking about
23 the constitutional system and how it works; how it works and
24 how it hurts an innocent person if you are sitting in jail.

25 And I'm telling you Mr. Betances adds nothing to this

K32Wsch4

Summation - Ms. Shroff

1 testimony. OK? I want you to just think about Mr. Betances
2 for two seconds. He wanted you to believe that he took those
3 videos and those photos in the MCC for no good reason. He took
4 them and he just kept them aside and he wasn't going to
5 cooperate and he wasn't going to get any benefit from the
6 United States until he hears the words "Russia" and
7 "information war." OK? Just go back. Go back for a minute
8 and look at how he talks about information war, because
9 seriously, it's a phrase used once.

10 Can somebody pull it up.

11 There you go.

12 "From here I will stage my information war," colon,
13 and then form tells you everything he will do:

14 "Facebook. I will rename simply who is John Galt or
15 who is Josh Schulte?"

16 That does not seem like a battle plan to me. And then
17 he tells you he's going to put this up on WordPress. OK?
18 Well, when he puts it up on WordPress, what's he going to talk
19 about? He's talking about his innocence. Is he talking about
20 anything other than his innocence? Presumption of Innocence:
21 Origins. Do you think anybody would want to know about his
22 opinions about the presumption of innocence? But that's what
23 he's focused on. It has nothing to do with destroying America
24 or having a battle plan of any sort.

25 This is what they've given you because they have no

K32Wsch4

Summation - Ms. Shroff

1 evidence that he stole anything from the CIA. Go back and look
2 at his words. These are the words. These are his thoughts,
3 his thoughts about a criminal justice system that have nothing
4 to do with anything else.

5 Now, look, Mr. Laroche spent a lot of time talking to
6 you about the legal elements, and I'm not going to be that
7 long. I want to spend just a few minutes talking to you about
8 the indictment. Just a very few minutes. OK?

9 The indictment has ten charges, ten crimes. Most of
10 them have to do with accessing a CIA computer to steal
11 information and give it to WikiLeaks. Your verdict on those
12 counts should be not guilty. I've shown you over and over
13 again and I've tried really hard to cut to the chase here, but
14 I've shown you over and over again, I hope, that the government
15 simply has not proven these counts beyond a reasonable doubt.

16 Counts Three and Ten -- they fall into a different
17 category -- these are what they call the MCC counts. Those are
18 the allegations that Mr. Schulte committed the crimes in late
19 2017 and '18 after he was arrested and after he's at the MCC.
20 Those are the attempts, that he attempted to send national
21 defense information.

22 Count Ten charges that he committed attempt. When you
23 look at the counts, the contempt and the other charges, focus
24 on the jury instruction that Judge Crotty will give you. You
25 will see that Mr. Schulte does not willfully transmit or

K32Wsch4

Summation - Ms. Shroff

1 attempt to transmit any national defense information from the
2 MCC. Think about all of these things that they're telling you
3 about those tweets, OK, this long paragraph? First of all, he
4 has a Twitter handle that nobody's following. Nobody even
5 knows who the hell Jason Bourne is. It has zero followers in
6 there. Nobody's reading it, and his diatribe exceeds Twitter's
7 140-character cutoff. There's no way this man can upload
8 anything onto Twitter at the rate he rambles on and on. It's
9 impossible. You know this. If you take a look at the
10 evidence, you will know that that is impossible.

11 The information he sends out is about his search
12 warrants. He wants to show that the government is wrong in the
13 search warrants, and you know that the government was, in fact,
14 wrong in these search warrants. You know this because the
15 agent testified that in the search warrants, the United States
16 Attorney's Office had the wrong date, in these initial
17 warrants. You know this. You know this because the United
18 States Attorney's Office not only had the wrong date but also
19 tried to come up with the relationship. They first said that
20 it was March 6 or March 7, and it had to be March 6 or March 7.
21 You know why? Because that's the date everybody else was out
22 of the cube and he was alone in the office.

23 They draw all kinds of diagrams and arrows and make up
24 all kinds of theories. No, it's not correct. Look at the
25 evidence. Don't listen to the arguments that come simply off

K32Wsch4

Summation - Ms. Shroff

1 of Mr. Leedom's 151- \$60,000 custom chart. Look at the
2 elements and look at the charge. Just listen to the charge
3 that Judge Crotty gives you on the issue of willfulness and
4 corrupt.

5 That leaves you with Counts Eight and Nine, which
6 allege that Mr. Schulte lied to the FBI. Both these counts
7 require the government to prove to you beyond a reasonable
8 doubt that Mr. Schulte acted willfully, corruptly, not by
9 mistake, not by accident. And you will see they will not be
10 able to prove those to you.

11 Mr. Schulte did not act with any bad purpose. Just
12 think about what the government wants you to believe. OK? The
13 government is saying to you that Mr. Schulte, the man who knew
14 that everybody at the CIA hated him, the man who knew that if
15 anything ever went wrong, he would be suspect No. 1 -- I mean,
16 think. Can you think of a single person at the CIA who did not
17 dislike him? That's a double negative, but you know what I'm
18 saying. Right?

19 I mean, he knows, by the time he hears of the leak he
20 knows the first person they're going to come after is him. I
21 mean, which one is he? Is he completely stupid, or is he
22 extremely smart? Because they really can't have it both ways.
23 So this man obviously knows that they are coming after him.
24 And who cares that he's searching? Imagine if you worked at
25 the CIA and information was stolen and you had left a long time

K32Wsch4

Summation - Ms. Shroff

1 ago. What would you Google? You'd want to find out what the
2 hell's going on. Yeah, it's normal. It's normal. There's
3 nothing wrong with that.

4 Just go back, when Judge Crotty is instructing you on
5 the jury charge, to the facts as they have come out, and you
6 will see that the government has failed to prove guilt beyond a
7 reasonable doubt.

8 Look, I'm going to sit down now. My work is almost
9 done. It's been four weeks of trial and a lot of evidence. My
10 work is almost done, and your work is just about beginning. So
11 as you undertake this work, I ask you to ask yourself -- ask
12 yourself about these witnesses -- do I trust these witnesses?
13 Do I trust these people? Do I trust the information that they
14 gave me? Is this the kind of proof that I can depend on? Is
15 this the kind of proof that would be enough, if Mr. Schulte
16 were my relative or my friend; would I trust that evidence?

17 If you ask yourself those questions, if you ask
18 yourself those questions, can I trust these witnesses, you will
19 know that the answer is no. Just for a moment think back to
20 Jeremy Weber. Just for a minute. Just go back to Jeremy
21 Weber's testimony. OK? And he tells you that he changed
22 accesses on April 4 of 2016. He tells you over and over again,
23 and the government told you over and over again, that the
24 accesses were changed on April 4, 2016. And the reason the
25 access was changed, Mr. Weber told everyone, including you, was

K32Wsch4

Summation - Ms. Shroff

1 because it was standard operating procedure. You leave OSB,
2 your access is taken out.

3 OK. Take a look at the evidence. Take a look at all
4 of those charts. Think back to all of those wonderful charts
5 Mr. Laroche showed you. And in all of that evidence, is there
6 a single email, a single conversation, a single note, anything
7 that tells you that on March 4, when they -- by they, I mean
8 Jeremy Weber -- changed Mr. Schulte's access he had
9 authorization from anyone. Because remember, they gloss over
10 this. Mr. Schulte doesn't realize that his access has been
11 taken away for ten full days. He is not working on that
12 project, so he doesn't try to access anything until April 14.
13 So if management really did authorize Mr. Weber, and management
14 did say go ahead and remove his OSB access, why is there no
15 email? Why is there no testimony? Why is there no document?
16 Why is there nothing that supports what Mr. Weber wants you to
17 believe? That he did this with management's backing.

18 I'm not talking about what you see after April 14,
19 because by then it's CIA mission time and everybody lines up
20 and supports Mr. Weber. I'm talking about the day that
21 Mr. Weber revoked access. April 4 to April 10, there's
22 nothing.

23 Can you trust a person who skips over that time period
24 and then tells you to just believe that these are the real
25 reasons why he removed Mr. Schulte's access? When you go back

K32Wsch4

Summation - Ms. Shroff

1 to deliberate, I ask you to please think of all of the gaps
2 that the government is asking you to fill. Ask yourself why
3 are there so many gaps that they want me to say it has to be
4 this and it has to be that? It's not your job to fill these
5 gaps. It's not your job to take the assumptions that Mr.
6 Laroche has given you. He's given them to you very nicely, by
7 the way, but they are still assumptions. They are not
8 evidence. Do not do what he's asking you to do. Do not fill
9 those gaps.

10 Your job as jurors is to put the government to the
11 task of proving guilt beyond all reasonable doubt, and that is
12 all I ask you to do.

13 So after this, I won't be able to speak to you again.
14 This is my one shot of telling you about all of the evidence
15 that proves Mr. Schulte's not guilty. The government gets to
16 give a rebuttal. The government gets to stand up and answer
17 everything that I have just said. Mr. Kamaraju gets up after
18 me, and I won't be able to answer back. I just won't have that
19 opportunity.

20 But you will. You know everything that I know, and no
21 matter what Mr. Kamaraju says, you will be able to answer that.
22 All you have to do is say what would Ms. Shroff say in response
23 to this argument, and you will have the answer, because in four
24 weeks, you know all of it. So I ask you, no matter what
25 Mr. Kamaraju says, ask yourself the four questions I asked you

K32Wsch4

Summation - Ms. Shroff

1 at the beginning:

2 What is the proof that Mr. Schulte stole this
3 evidence? There isn't proof of that. They have given you
4 proof of other things. And I told you this in the beginning.
5 And what I said to you in the beginning, I think, has borne
6 out. I told you truthfully. I told you that Mr. Schulte was a
7 difficult man. He was a difficult employee, and I told you
8 that there was no doubt about that. I told you that the
9 evidence would show that, and that's what the government showed
10 you. For four weeks that's what they showed you. They proved
11 to you that, yes, you can properly call him Voldemort or Vault
12 Asshole or Asshole or Jason Bourne or John Galt. They have
13 given you evidence of all of that. But one thing that you
14 cannot call him, after four full weeks, because the evidence
15 isn't there, you cannot call him guilty. Please acquit.

16 Thank you.

17 THE COURT: We'll take a short recess, and then we'll
18 hear the government's rebuttal. We'll take about a ten-minute
19 recess.

20 (Recess)

21 THE COURT: Are you all set, Mr. Kamaraju?

22 MR. KAMARAJU: Yes, your Honor.

23 THE COURT: Call the jury, David.

24 Hold on a second, David. Where is Mr. Schulte?

25 Are we all set now? OK.

K32Wsch4

Rebuttal - Mr. Kamaraju

1 (Jury present)

2 THE COURT: Please be seated.

3 All right. Mr. Kamaraju.

4 MR. KAMARAJU: Thank you, your Honor.

5 Well, I'm the last one up. And I'd like to start with
6 something Ms. Shroff said. Ms. Shroff talked to you about
7 reasonable doubt. Reasonable doubt is an important standard in
8 our criminal justice system. It's an important safeguard.
9 Reasonable doubt is part of why we're here.

10 Now, the other thing reasonable doubt is is something
11 that we are not afraid of. It is our burden. We embrace it,
12 and we have met it. Now, I'm not going to walk through all of
13 the evidence that Mr. Laroche put before you, but over two
14 hours, he described to you all of the evidence that shows that
15 this man is responsible for Vault 7; that this man is
16 responsible for breaking into the CIA computer systems; that
17 this man tried to conduct an information war from the MCC.
18 That's the evidence that you have.

19 What they gave you are conspiracy theories,
20 speculation and guesses.

21 MS. SHROFF: Objection, your Honor.

22 THE COURT: Overruled.

23 MR. KAMARAJU: Now, they have no obligation. You'll
24 hear that from Judge Crotty. They could have sat there and
25 said nothing. But when they do offer something to you, when

K32Wsch4

Rebuttal - Mr. Kamaraju

1 they do give you a theory, you should look at it. You should
2 consider it. You should think, does it make any sense? You
3 should think, is it supported by any evidence? And if you do
4 that, you're going to see that nothing Ms. Shroff said to you
5 is supported by evidence or common sense.

6 So let's just start with her big other suspect,
7 Michael, the man who took the stand here in New York.

8 Now, Ms. Shroff said that Michael was a coder who had
9 all the same skills that he did, the skills necessary to steal
10 the information. She said he was there on April 20, 2016, just
11 like he was. They said he was logged in to vSphere, and then
12 they tried to tell you that because he was logged in to
13 vSphere, he could have used this one password and that password
14 could have been the thing that was used to copy the
15 information.

16 Do you remember that?

17 But it's impossible for that to be the case because as
18 Defense Exhibit O said -- she put it up for you -- it said that
19 password was never used to log in to the Confluence VM in March
20 or April of 2016. It wasn't used. It's a pure fantasy.

21 Now, they tried to recover from that by saying, Well,
22 if it had been used, that data would have been deleted during
23 the reversion. And that's where this all falls apart. Because
24 who did the reversion? Over the course of almost two hours,
25 Ms. Shroff talked about everything from targeting to the length

K32Wsch4

Rebuttal - Mr. Kamaraju

1 of tweets but did not address the critical time period in this
2 case: when the system was reverted and who did it. And you
3 know why? Because there's no disputing that he did it.

4 And you know why there's no disputing that? Because
5 all of the evidence is on his workstation. They found it on
6 his computer. These FBI buffoons, these forensic experts that
7 couldn't find their way out of a paper bag found it on his
8 workstation. They found evidence that he reverted the system.
9 They found evidence that he deleted all those logs. They found
10 evidence that he reverted back, something that makes no sense.
11 All of that they found on his box, not Michael's, not David's,
12 not anybody else. His.

13 Now, what does that mean?

14 What that means is that during the reversion, this man
15 had access to the exact data that's up on WikiLeaks. There's
16 no serious dispute that that's the data. It's sitting on the
17 internet now because he copied it. And Ms. Shroff said, Well,
18 maybe Mr. Kamaraju will come up here and answer some of those
19 questions. I'm here to answer some of those questions.

20 You know how you don't know that there's a copy
21 command, why Mr. Leedom couldn't find it? Because he deleted
22 it. That's what happens when you delete logs. He deleted the
23 very logs that would show a copy command. You know how she
24 said there was no device connected, you couldn't find any
25 device? That's because everything he was doing was in the

K32Wsch4

Rebuttal - Mr. Kamaraju

1 virtual machine.

2 Remember those things? We've talked a lot about
3 virtual machines, but it's that weird computer within a
4 computer. And guess what? He deleted those logs too, every
5 log that would have showed the storage device in that virtual
6 machine. He deleted those too. And then, if it wasn't good
7 enough, as if that wasn't enough, he brought everything, as Mr.
8 Laroche said, back to the future, and he wiped away all the
9 indications of what he was doing before. It was him, not
10 Michael, not anyone else.

11 Now, Ms. Shroff spent a lot of time talking about this
12 thumb drive. Ms. Shroff spent more time talking about that
13 thumb drive than we did. We never told you that the thumb
14 drive was the way he took it out. We told you that he was so
15 nervous about what he was doing on April 20, 2016, that he
16 wiped that thumb drive clean the next day even though it wasn't
17 plugged in at the time of the reversion. That's how nervous he
18 was about what he was doing.

19 But you know what you also saw that the defendant
20 took? When she talked about, Well, how did it walk out on the
21 hard drive? You saw hard drives in this case. They were about
22 this big. Do you remember them? We showed them to you during
23 the testimony of Mr. Berger. Those were hard drives recovered
24 from his apartment. Those were hard drives that had been wiped
25 clean. Those were hard drives that had been securely deleted

K32Wsch4

Rebuttal - Mr. Kamaraju

1 after he researched how to nuke data, after he researched how
2 to securely wipe a hard drive. Those hard drives were one
3 terabyte big, each one of them. Those hard drives are sitting
4 in his apartment, where he googled how do I guarantee that one
5 terabyte of data transferred correctly? That's how he got it
6 out, and that's how he sent it out.

7 Ms. Shroff also spent a lot of time saying, Well, why
8 did it take WikiLeaks so long? Why was that a year later?

9 Well, let me put it this way. What WikiLeaks did,
10 when WikiLeaks sent it out, that's for a trial of WikiLeaks.
11 That's their choice, because what's relevant is when he sent it
12 out, and when he sent it out was May 1, 2016, just about ten
13 days after stealing it the first time. That's what's relevant.

14 And the fact that WikiLeaks took some time to put it
15 out doesn't undercut that in the slightest because you heard,
16 for example, from Mr. Leedom. You heard him talk about how
17 long that would take. You also heard that WikiLeaks had some
18 other stuff going on. There are reasons, but you are not
19 called upon to look into the mind of WikiLeaks. That's not
20 what your job is.

21 Because you know who was trying to look into the mind
22 of WikiLeaks? This man. This man was when he tried to Google
23 what's coming up next in 2017, when he tried to Google
24 WikiLeaks's code, because he didn't see it out there. He was
25 trying to figure out why isn't my stuff out there? I put it

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Rebuttal - Mr. Kamaraju

1 out there. I gave it to you. Why haven't you disclosed it
2 yet?

3 And then they did. And then he started googling
4 again.

5 Now, Ms. Shroff said: Oh, it's normal. He's a former
6 CIA employee. Of course, he'd be interested in what's going
7 on.

8 Sure. I'm sure every CIA employee is interested in
9 what happened that day. You know what they all weren't
10 googling? The FBI. They weren't googling about the FBI's
11 investigation into who the mole was. Why would he be concerned
12 about that? Because he's the mole. That's why he's looking.
13 That's why he's trying to figure out what happened and what the
14 FBI was doing.

15 Now, they offered you any number of distractions to
16 try to take you off that message. They talked about this memo
17 with Michael, and Judge Crotty's going to instruct you about
18 that memo. And he's going to say we should have given it to
19 them earlier. We apologize. That's on us.

20 But he's also going to tell you that it's up to you to
21 decide how much weight to give that memo. It's up to you to
22 decide whether it means anything at all. And you know it
23 doesn't because they got it, and look what they did with it.
24 They put it up in front of you. They cross-examined the guy
25 who helped write it, and at every turn, the memo said exactly

K32Wsch4

Rebuttal - Mr. Kamaraju

1 what it said from the beginning, which is the reason why
2 Michael is on administrative leave. The reason why the CIA
3 forced him out is because of him. It's because Michael
4 wouldn't talk about what he did with him.

5 Look at the memo. The memo talks about his lack of
6 cooperation into the investigation with the primary person of
7 interest in the FBI investigation, his lack of cooperation into
8 the investigation, into who was charged with the Vault 7
9 disclosure.

10 Well, looking around the room, who was charged with
11 that?

12 He was, because that is what Michael was put on
13 administrative leave for, not telling on his friend, the same
14 friend who now sits here and tries to blame him for the largest
15 theft of classified information in the CIA's history, a theft
16 that he committed.

17 Now, Ms. Shroff tried to argue in some way that he
18 wasn't angry on March 3, 2016; the day of that backup wasn't a
19 significant thing. She told you that's just in our minds.

20 Well, go back and listen to some of those recordings
21 that Mr. Small made. You'll hear, you'll hear his words when
22 he says I was upset that they talked about not wanting to be a
23 guidance counselor, that that wasn't their job, not to be a
24 guidance counselor.

25 Look at the emails. Look at the email chains. You'll

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Rebuttal - Mr. Kamaraju

1 see an email from Dana, when Dana says, It's not my job to play
2 guidance counselor. You'll see the date of that email. March
3 3, 2016. He told you that he was angry about it. Not us.
4 Him.

5 And Mr. Nuclear Option over here also told you what he
6 does when he gets angry. He told you in that interview. He
7 would look to punch. He would do whatever he can. He told you
8 in his emails that he would fight back. He told you in those
9 prison notebooks, where he said that he would declare an
10 information war to destroy the United States's diplomatic
11 relationships.

12 Ms. Shroff kept saying there's no battle plan. What's
13 the battle plan?

14 That's the battle plan. He wrote it down, and he
15 methodically proceeded to carry it out. You want to know how
16 you know that? He had checklists. One of the entries in the
17 checklist is delete suspicious emails. It is impossible to
18 come up with a more incriminating piece of evidence than delete
19 suspicious emails. And yet that's what he did. That's what he
20 wrote down.

21 He also wrote down a set of tweets that captured
22 highly sensitive classified information about a CIA tool and
23 how it was going to be used. And he prepared to send it out.
24 And he prepared to disseminate that to the world, all to try to
25 help himself.

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Rebuttal - Mr. Kamaraju

1 Now, in the intelligence community, there's a phrase
2 called "false flags." All right? And false flags means
3 basically you try to convince everyone that somebody else did
4 it. And that's all fine for spies. Right? But where I come
5 from, what's that called? Throwing someone under the bus. And
6 throwing someone under the bus is Josh Schulte's tradecraft.
7 That's what he does. He's trying to do it with Michael here,
8 and if you look at those tweets, he tried to do it with Jeremy
9 and Karen there. And we'll come back to Jeremy and Karen in a
10 second and the rest of their tinfoil-hat theories.

11 That's what he does, and he continued to do it in
12 prison, posing as his brother, posing as his family, all in an
13 effort to try to get out his tweets, his articles, his
14 description of what happened, his classified information.

15 Are those the acts of an innocent man? Are those the
16 acts of a man who just wants to be heard about the Constitution
17 and the criminal justice system? No. That's a CIA operative
18 trying to use his training to fool the world and, in the
19 process, to conduct that information war.

20 Now, Ms. Shroff told you that we were going to focus
21 heavily on the prison conduct. The prison conduct took two
22 days. It took two days because it's pretty straightforward.
23 All you have to do is go look at Special Agent Schlessinger's
24 testimony, and you'll see how he turned words on a page into
25 action in the real world. And I encourage you to do that.

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Rebuttal - Mr. Kamaraju

1 What we spent the bulk of the time talking about was
2 all of the evidence, that this man is responsible for Vault 7.

3 Now, Ms. Shroff made a big deal about how the FBI
4 targeted him. Remember that? She said, Oh, he was a
5 disgruntled employee, and they went after him because they --
6 what the FBI did, what she calls targeting, is called following
7 clues. It's a clue when a guy leaves on the terms that he left
8 with. It's a clue when the guy illegally manipulates CIA
9 computer systems to give himself back access to projects. It's
10 a clue when he sends an email on his way out saying: Just you
11 wait. You'll see. I was right. All this stuff's going to end
12 up on the internet one day.

13 And guess what? It did. Those are clues, and so the
14 FBI followed them and they investigated more and they developed
15 more evidence.

16 But they didn't just follow clues about him. You saw
17 Special Agent Evanchec. He took that stand. You heard him
18 testify, and he testified that when they found out, for
19 example, about this Stash backup that David had taken, they
20 confronted him about it. They asked him about it. And guess
21 what? That backup, that Stash backup, it's not even the day of
22 the stuff that's on the internet. It's a totally different
23 date. It's totally irrelevant. That is just a distraction.
24 But nonetheless, it was something that the FBI ran down,
25 because that's how diligent they were.

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Rebuttal - Mr. Kamaraju

1 They even did that with Michael, Michael, the big, bad
2 boogeyman. When they found out Michael hadn't told them about
3 the screenshot, what did they do? Special Agent Evanchec told
4 you they had a confrontational interview with him. They
5 confronted him. And now, yes, when Michael did not disclose
6 everything that he appears to know about what this man was
7 doing, the CIA put him on administrative leave. He suffered
8 those consequences.

9 The FBI did not target anyone.

10 Now, Ms. Shroff uses an example of that, the testimony
11 by Mr. Berger, in which she said Mr. Berger tried to insinuate
12 that the data.bkp file had something classified in it and it
13 wasn't until we cross-examined Special Agent Evanchec that the
14 truth came out. That is flat-out wrong. There's a transcript.
15 You can read the transcript. Go take a look at who asked that
16 question. Mr. Laroche asked that question, because we're not
17 trying to hide anything from you.

18 Special Agent Evanchec, the lead case agent in this
19 group that's trying to target him, took that stand and said no,
20 there wasn't anything classified in that. It's the ones that
21 he deleted that had the classified information, not the one
22 that he left on his computer. Special Agent Evanchec, part of
23 this cadre of FBI agents who tried to target this man, he took
24 the stand and he told you, you know what, he was actually
25 pretty cooperative.

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Rebuttal - Mr. Kamaraju

1 It was just the two of them there. He could have said
2 anything he wanted on that stand. But he didn't. He told the
3 truth. Is that consistent with somebody who is targeting this
4 man, with somebody who is on a mission to put him away? No,
5 it's not.

6 And that's true for every single witness that we
7 called. Every witness that we called, if you go back and you
8 look at their testimony, if there was something that was
9 helpful for the defendant, they didn't shy away from it. They
10 didn't back down. In fact, if you remember, Ms. Shroff brought
11 up all this testimony about was he angry. Go back and look.
12 Look at what Mr. Leonis said when asked that question. He said
13 he didn't appear that angry to him. He said it because he
14 believed it, because it was the truth, because he showed up
15 here to tell you the truth.

16 Now, part of the truth is that some of these witnesses
17 thought that DevLAN was not as secure as some other CIA
18 networks. That's what their testimony actually is, not the
19 snippets that she cherry-picked, not the little sections that
20 she said, Let's just look at this one line.

21 Go look at their actual testimony. It's the CIA.
22 Computer systems are locked down. But a computer system that
23 allows for hacking tools to be developed, that allows for cyber
24 programs, cyber tools to be worked on, it can't be the same as
25 the one that's running your regular old email. It's got to be

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Rebuttal - Mr. Kamaraju

1 dirty. It's got to be a little open, because otherwise they
2 could never test what they were doing. But the part of the
3 system, the part of the system from where this data was stolen,
4 the Altabackups, so there's no serious dispute about that
5 during this trial --

6 Bless you.

7 JUROR: Thank you.

8 MR. KAMARAJU: That part of the system, you'd better
9 believe it was locked down. And you saw that evidence. You
10 saw that evidence in David's testimony, and you also heard that
11 even though there were some people who knew about it, that was
12 a small number. There were just a handful of folks who even
13 knew they existed. You know who one of those people were?
14 This man, the guy who created them. He knew where they were.
15 He knew how to get to them. And that's what he did on April
16 20, 2016.

17 So as she tries to distract you with all this wild
18 Wild West talk, think again about what we're talking about.
19 We're talking about a CIA computer system, locked in a
20 building, behind armed guards, kept in a vault that can only be
21 accessed by people with top secret security clearance who had
22 undergone background checks. And yes, admittedly, they missed
23 one. That one. He was the security flaw. He was the security
24 danger. He's the reason why we're here today.

25 Now, there have been a lot of forensics, and Ms.

K32Wsch4

Rebuttal - Mr. Kamaraju

1 Shroff has argued that, even today, we don't know what
2 happened. That's simply false. If you use your common sense,
3 you know exactly what happened. I get it. There's some dense
4 forensic evidence here, right? There are some complicated log
5 files that took some expertise to dig through. But common
6 sense tells you what happened here. Common sense.

7 Now, Ms. Shroff has twice now used this phrase, and
8 thinking about it, I have to say it's a pretty good analogy.
9 She's called it the heist. And even with this, right? I think
10 Matt Damon's done a few heists movies. This was a digital
11 heist. That's what happened.

12 What do you do before? Before you pull off the job,
13 you case the joint. That's what he did on April 18, as he
14 reconnaissance, looking at where he could get into the system,
15 looking at what log files are generated. Then you have to take
16 care of the log system. Well, that's what he did on April 20,
17 when he reverted it, to a point where he had the codes; he
18 could unlock the alarm system. That was the reversion.

19 And just like all those movies, he knew he had to move
20 right then because he had gotten an email saying that vault
21 that you have access to, that vault that's got all that
22 precious material, it's not going to be there anymore. You're
23 not going to be able to get it, and so he acted. And he crept
24 into that vault, and just like if it were jewelry or paintings
25 or gold bars, he took it.

K32Wsch4

Rebuttal - Mr. Kamaraju

1 Now, these are files. And Ms. Shroff keeps saying,
2 Well, the CIA had no idea that it was taken.

3 Well, it's not a painting on the lawn. You can't walk
4 by and notice, Oh, it's gone, because what he did was he copied
5 it. And you know he copied it because you saw that exhibit.
6 And yes, we put it up a lot. You want to know why? Because it
7 is devastating evidence of what he did. It is confirmation
8 that he copied those files on that day.

9 And then, after he copied it, what did he do? He
10 crept out of that vault, and he deleted all the surveillance
11 footage to make sure he didn't get caught, because that's what
12 deleting all those logs was. It was absolutely a heist, and
13 he's the one who did it.

14 But it didn't end there, right? Because now you have
15 the stuff. Now what are you going to do with it?

16 Well, he wanted to get it out because he wanted to
17 punish. Right? It doesn't do any good burning a hole in his
18 pocket. And so that's what he did. He transmitted it. Over
19 the next several days he transmitted it to WikiLeaks, but not
20 before first making sure that he could burn everything to the
21 ground in the end when he needed to. That's what he did.

22 Go back and look at those Google searches. The only
23 time since 2006 that he looked up some of that stuff was right
24 after April 20, 2016, right after he stole the material.

25 Now, you know that to be true. You know that using

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Rebuttal - Mr. Kamaraju

1 your common sense. You know that reviewing the evidence. And
2 truth be told, they know it too.

3 And so instead of taking that on, what did they do?
4 They come up with a story about a mission. They tell you a
5 tale, a tale that this man, a random developer sitting in a
6 cubicle somewhere, is now the target of a massive conspiracy
7 run by the CIA, the FBI and these prosecutors, all to make sure
8 that instead of the real perpetrator, he goes away.

9 (Continued on next page)

10
11 MR. KAMARAJU: It's never explained why that would be
12 the case. It's never explained why, because he's a little
13 difficult, all of a sudden, the CIA and the FBI and the U.S.
14 attorney's office, that all of these organizations, would all
15 of a sudden decide, you know what? He is a jerk, so let's
16 frame him for the biggest theft of classified in history in
17 America. That doesn't make sense.

18 Just take a look at the coincidences that would have
19 to happen. Just think about how unlucky this man would have to
20 be. Just think about the chain of events.

21 So it all starts in the fall of 2015. And in the fall
22 of 2015, he first raises death threats about a guy named Amol.
23 And he does it again in March. But, the CIA security office,
24 who doesn't even report to Karen and all those other managers,
25 the CIA security office decides, we are so intent on screwing

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Rebuttal - Mr. Kamaraju

1 Joshua Schulte, that we're going to let a potential murderer
2 run around this building. They look at it. They determine his
3 threats are credible, and say, nah, forget about it. You know
4 what? We're out to get him. Then, they take his privileges
5 away. Never mind that he moved groups and shouldn't be working
6 on the project anymore. No, no, no, this was a vindictive act.
7 A vindictive act by Jeremy Weber.

8 You saw Jeremy Weber testify. You saw all of the
9 management employees testify behind him. There was no
10 vindictive act. But in his world, that's what happened.
11 Jeremy Weber takes his privileges away illegally. And then he
12 takes them back, because that's what he does. He told you that
13 in his own words. He takes them back.

14 So now, these CIA managers, they've got him over the
15 barrel. Right? He's violated all of these policies. They
16 could do anything they want at that moment. If they are going
17 to frame him right then and there, they could call the FBI.
18 They could lock him up.

19 And they call him in at a meeting on Monday morning,
20 and what do they do? They give him a strongly worded memo.
21 That's the frame job. That's the persecution. They give him a
22 memo. And the memo says don't do it again. But they are so
23 committed, they are so committed to persecuting him, that when
24 he raises a concern with the memo, they incorporate his
25 feedback.

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Rebuttal - Mr. Kamaraju

1 How is that consistent with a mission to screw Joshua
2 Schulte? And that happens not once, but twice. You heard
3 Ms. Shroff spend all kinds of time talking about strikeouts.
4 You know what the impact of the strikeout was? They took
5 language that he disagreed with, and they crossed it out and
6 said, fine, Mr. Schulte, you know what? We're going to change
7 this.

8 If they were out to get him, why wouldn't they leave
9 the memo exactly like it was? Why wouldn't they make it as
10 damning as possible? Because there's no conspiracy.

11 But, marching on through his conspiracy theory, now,
12 he leaves the agency entirely. And even though he's the one
13 that took these e-mails and these handwritten notes about this
14 dispute and kept them next to his pillow, no, no, he's not
15 angry, he's over it. But even though he is the one who did
16 that, it's CIA that can't get over it. It is the agency that
17 just can't let this go.

18 And so the leaks happen. Instead of checking out
19 whether it was Turkey, or whether it was Dave, or whether it
20 was Michael, or whether it was any of the other people, a group
21 of middle managers at CIA decide that, because he's difficult,
22 because he -- to use Ms. Shroff's term and the term that came
23 out -- was a bald asshole, they're going to frame him. Does
24 that make any sense?

25 Not only, though, does this group of middle managers

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Rebuttal - Mr. Kamaraju

1 do it. But they have to get the entire CIA on board. Right?
2 You remember Ms. Shroff showed it to you, the task force
3 report. They had to convince the entire CIA that instead of
4 pursuing these other angles, let's just settle on this guy.
5 Let's just go with this guy. It doesn't matter to us to figure
6 out what actually happened. It doesn't matter. We don't care.
7 We are going to convene a task force, but all we really care
8 about is getting this guy.

9 It doesn't make sense. But it also doesn't end there.
10 Because not only does the CIA have to be on board, you heard
11 from the very beginning, the FBI took over the investigation.
12 The FBI, a group of folks who had never heard of Joshua Schulte
13 until this case started.

14 And so somehow, CIA having itself concluded that the
15 best path is to screw this man, gets the FBI on board, too, and
16 gets the FBI to say, forget it. We're not going to conduct a
17 real investigation. We're going to screw this guy.

18 And then all of those folks come here to testify at
19 this trial. And at those moments, when they could put the
20 knife in the most, what do they do? They tell the truth.

21 Think about Michael. Ms. Shroff said there wasn't a
22 single person at the agency who liked the defendant. There was
23 one. His name was Michael. And he came here, and he
24 testified. And what did he tell you? If Michael was the
25 perpetrator, if Michael was the one who was going to do all

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Rebuttal - Mr. Kamaraju

1 this, then when he took the stand and testified about a
2 conversation that these two men had on April 20, 2016, just the
3 two of them. No one else around. Perfect opportunity for him
4 to finish the job. For him to put a nail in the coffin. For
5 him to convince all of you, no, no, it's him. For him to say,
6 he told me all about it. For him to say, he slipped up. The
7 moment that Michael could have ended this, he took the stand,
8 and he said, no, we didn't really talk about it. Josh didn't
9 really say anything about it. At that moment, Michael told the
10 truth. And that is totally inconsistent with this mission,
11 this mission that they say we are on.

12 The fact of the matter, ladies and gentlemen, is that
13 Joshua Schulte is not being persecuted. He is being
14 prosecuted. And he's being prosecuted as a result of
15 deliberate choices he made. The choice to break into a
16 classified CIA computer system. The choice to steal sensitive,
17 classified tools information from that system. The choice to
18 obstruct and lie to the FBI. The choice to conduct an
19 information war from the MCC.

20 He's being prosecuted for his choice to abandon his
21 oath to defend this country against enemies, foreign and
22 domestic, and to protect its secrets.

23 And now, ladies and gentlemen, it's time for you to
24 fulfill your oath, and it's time now for you to make a choice.
25 And we submit that when you look at all of the evidence, and

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1 when you hear Judge Crotty's instructions on the law, there is
2 only one choice. And that is that the defendant, Joshua
3 Schulte, is guilty as charged. Thank you.

4 THE COURT: Thank you Mr. Kamaraju. We'll take a half
5 hour break now, and then I'll charge the jury and you can begin
6 your deliberations. So half an hour, we'll start at 10 to 2.
7 Thank you.

8 (Recess)

9 (Continued on next page)

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Charge

1 AFTERNOON SESSION

2 1:50 p.m.

3 (Jury present)

4 THE COURT: I told you at the beginning how important
5 your service is to our country and our system of justice. I
6 want to repeat that. You have been most conscientious in your
7 attendance, your punctuality, and the complete attention you
8 have given during the trial.

9 I am going to read these instructions to you now, but
10 I want you to know that I am going to send the instructions
11 into the jury room. So you do not have to take notes, just
12 listen.

13 Do not single out any particular instruction as alone
14 stating the law. You should instead consider my instructions
15 as a whole.

16 You are about to start your deliberations. You've
17 heard all the evidence as well as the lawyers' final arguments.
18 Now it is my duty to instruct you as to the law that will
19 govern during your deliberations. As I told you at the start
20 of this case, and as you agreed, it is your duty to accept my
21 instructions of law and to apply them to the facts as you
22 determine them. Regardless of any opinion that you may have as
23 to what the law may be or --

24 A JUROR: Speak up a little bit, please. We can't
25 hear you.

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Charge

1 THE COURT: Thank you. Regardless of any opinion --
2 is that better?

3 A JUROR: Yes.

4 THE COURT: Regardless of any opinion that you may
5 have as to what the law may be or ought to be, it is your sworn
6 duty to follow the law as I give it to you. Also, if any
7 attorney or other person has stated a legal principle different
8 from any that I state to you in my instructions, it is my
9 instructions that you must follow. You will begin your
10 deliberations after these instructions.

11 Your duty is to decide the factual issues in the case
12 and arrive at a verdict. The jury is the sole and exclusive
13 judges of the facts. You decide the weight of the evidence;
14 you determine the credibility of witnesses; you resolve such
15 conflict as there may be in the testimony; and you draw
16 whatever reasonable inferences you decide to draw from the
17 facts as you determine them.

18 In determining the facts, you must rely upon your own
19 recollection of the evidence. None of what the lawyers have
20 said in their opening statements, closing arguments, questions
21 or objections is evidence. They are not sworn as witnesses;
22 they do not testify; they make arguments about what conclusions
23 you should draw from the evidence or lack of it. But as I
24 said, that is argumentation, not evidence. And the same
25 applies to me. Anything I have said is not evidence. I have

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Charge

1 allowed you to take notes, but as I said earlier, your notes
2 are not evidence either.

3 The evidence before you consists of just two things:
4 The testimony given by witnesses from the witness stand right
5 here that we received in evidence, and the exhibits that were
6 received in evidence.

7 Testimony consists of the answers that were given by
8 the witnesses to the questions that were permitted. The
9 questions themselves are not evidence. It is the answers to
10 the questions that count. Also, as I instructed you at the
11 beginning of this case, I'm sure you complied with my
12 instruction, anything you may have seen or heard about this
13 case outside the courtroom is not evidence and must be entirely
14 disregarded.

15 It is the duty of the attorney for each party to
16 object when the other party offers testimony or other evidence
17 that the attorney believes is not properly admissible. Counsel
18 also have the right and the duty to ask the Court to make
19 rulings of law and to request conferences out of the hearing of
20 the jury. All such questions of law must be decided by me.
21 You should not show any prejudice against any attorney or party
22 because the attorney objected to the admissibility of evidence
23 or asked for a conference out of your hearing or asked me for a
24 ruling on the law.

25 The testimony and the documents that have been

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Charge

1 admitted into evidence are appropriate for your consideration.

2 You may consider all the evidence that has been admitted.

3 I also ask you to draw no inferences from my rulings
4 or the fact that upon occasion I asked a question or made
5 certain observations. My rulings were no more than the
6 application of the law, and my questions were only intended for
7 clarification or to expedite matters. You are expressly to
8 understand that I have no opinion as to the verdict that you
9 should render in this case.

10 You are to perform your duty of finding the facts
11 without bias or prejudice as to any party. You are to perform
12 your duty with an attitude of complete fairness and
13 impartiality. This case is important to the parties.
14 Mr. Schulte is charged with serious crimes. He has pleaded not
15 guilty. It is important for the government, too. Enforcement
16 of the criminal laws is a prime concern of the government.

17 The fact that the prosecution is brought in the name
18 of the United States of America entitles the government to no
19 greater consideration than that accorded to any other party.
20 By the same token, it is not entitled to less consideration.
21 All parties, whether the government or individuals, stand as
22 equals before the Court.

23 It would be improper for you to consider, in reaching
24 your decision as to whether the government sustained its burden
25 of proof, any personal feelings you may have about

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1 Mr. Schulte's race, religion, national origin, gender, sexual
2 orientation, or age. Similarly, it would be improper for you
3 to consider any personal feelings you may have about the race,
4 religion, national origin, gender, sexual orientation, or age
5 of any witness or anyone else involved in this case. The
6 defendant is entitled to the presumption of innocence, and the
7 government has the burden of proof, as I will discuss in more
8 detail in a moment. It would be equally improper for you to
9 allow any feelings you might have about the nature of the
10 crimes charged to interfere with your decision-making process.
11 Do not be swayed by sympathy. Rather, the crucial question
12 that you must ask yourselves as you review the evidence is:
13 Has the government proved the guilt of Mr. Schulte beyond a
14 reasonable doubt?

15 You cannot let bias, prejudice, fear, disgust,
16 sympathy, or any other irrelevant consideration interfere with
17 your thinking. That might interfere with your obligation to
18 arrive at a true and just verdict. So do not be guided by
19 anything except clear thinking and calm analysis of the
20 evidence.

21 You should also not consider any personal feelings you
22 may have about the attorneys who represented the parties in
23 this matter. As I indicated at the beginning of this trial,
24 the lawyers and the other participants at counsel table have
25 been instructed not to have any communications with you as

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1 jurors. If due to the congestion in the courthouse you ran
2 into counsel and they ignored you, they did so because that's
3 what they're supposed to do. That's the rule. This should not
4 influence your decision regarding Mr. Schulte's innocence or
5 guilt in any way.

6 The potential punishment of the defendant is not a
7 jury concern and should not, in any sense, enter into or
8 influence your deliberations. The duty of imposing a sentence
9 rests exclusively with the Court. Your function is to weigh
10 the evidence or lack of evidence in the case, and to determine
11 whether or not the government has proved that Mr. Schulte is
12 guilty beyond a reasonable doubt.

13 I told you before -- and I am going to tell you
14 again -- Mr. Schulte is presumed innocent until proven guilty
15 beyond a reasonable doubt. Mr. Schulte has pleaded not guilty
16 to the charges alleged in the indictment. As a result, the
17 government has the burden to prove the defendant's guilt beyond
18 a reasonable doubt. This burden never shifts from the
19 government to Mr. Schulte for the simple reason that the law
20 presumes the defendant innocent and never imposes upon any
21 defendant in a criminal case the burden or duty of calling any
22 witness or producing any evidence.

23 In other words, Mr. Schulte starts with a clean slate.
24 He is presumed innocent until such time that you, the jury, are
25 unanimously satisfied that the government has proved

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1 Mr. Schulte guilty beyond a reasonable doubt. If the
2 government fails to sustain this burden with respect to
3 Mr. Schulte, you must find him not guilty.

4 The government must prove the defendant guilty beyond
5 a reasonable doubt. The question then is what is a reasonable
6 doubt? The words almost define themselves. It is a doubt
7 based upon reason. It is a doubt that a reasonable person has
8 after carefully weighing all of the evidence. Proof beyond a
9 reasonable doubt must, therefore, be proof of such a convincing
10 character that a reasonable person would not hesitate to rely
11 and act upon it in the most important of his or her own
12 affairs.

13 A reasonable doubt is not a guess or a whim. It is
14 not speculation or suspicion. It is not an excuse to avoid the
15 performance of an unpleasant duty. And it is not sympathy.
16 The law does not require that the government prove guilt beyond
17 all possible doubt. Proof beyond a reasonable doubt is
18 sufficient to convict.

19 If, after a fair and impartial consideration of all
20 the evidence, you have a reasonable doubt as to the guilt of
21 Mr. Schulte, it is your duty to find the defendant not guilty.
22 On the other hand, if, after a fair and impartial consideration
23 of all the evidence, you are satisfied that the government has
24 met its burden of proving Mr. Schulte guilty beyond a
25 reasonable doubt, it is your duty to find the defendant guilty.

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1 Now I want to say a few words about evidence. The
2 indictment is not evidence. Mr. Schulte was formally charged
3 in an indictment. He is entitled to know the charges against
4 him. But as I instructed you when the trial started, the
5 indictment is not evidence. It merely describes the charges
6 against Mr. Schulte and may not be considered by you as any
7 evidence of his guilt.

8 I'm not going to read the indictment to you because I
9 will send you copies of the indictment for your review in the
10 jury room.

11 In deciding whether Mr. Schulte is guilty or not
12 guilty, you may consider both direct evidence and
13 circumstantial evidence. Direct evidence is evidence that
14 proves a disputed fact directly. For example, where a witness
15 testifies to what he or she saw, heard or observed, that is
16 called direct evidence.

17 Circumstantial evidence is evidence that tends to
18 prove a disputed fact by proof of other facts. To give a
19 simple example, suppose that when you came into the courthouse
20 today the sun was shining and it was a nice day. But now the
21 courtroom blinds are drawn and you cannot look outside. As you
22 are sitting here, someone walks in with a dripping wet
23 umbrella, and soon thereafter someone else walks in with a
24 dripping wet raincoat. Now, on our assumed facts you cannot
25 look outside of the courtroom and see whether it is raining, so

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1 you have no direct evidence of that fact. But on the
2 combination of the facts about the umbrella and the raincoat,
3 it would be reasonable for you to conclude that it had started
4 to rain. That is all there is to circumstantial evidence.
5 Using your reason and experience, you infer from established
6 facts the existence or the non-existence of some other fact.

7 An inference is the deduction or conclusion that
8 reason and common sense prompt a reasonable mind to draw from
9 facts that have been proven by the evidence. Not all logically
10 possible conclusions are legitimate or fair inferences. An
11 inference is not a suspicion or a guess. It is a reasoned
12 logical decision to conclude that a disputed fact exists on the
13 basis of another fact which you know exists. In drawing
14 inferences, you should exercise your common sense. Only those
15 inferences to which the mind is reasonably led or directed are
16 fair inferences from direct or circumstantial evidence in this
17 case. Whether or not to draw a particular inference is, of
18 course, a matter exclusively for you to decide, as are all
19 determinations of fact.

20 Many material facts, such as state of mind, are rarely
21 susceptible of proof by direct evidence. There is no way for
22 us to look into people's minds, so those facts are established
23 by circumstantial evidence and the inferences the jury draws
24 from them. The law makes no distinction between direct and
25 circumstantial evidence. Circumstantial evidence is of no less

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1 value than direct evidence, and you can consider either or both
2 and give them such weight as you conclude is warranted.

3 Now a word about witness credibility. It must be
4 clear to you now that counsel for the parties are asking you to
5 draw very different conclusions about significant factual
6 issues in this case. An important part of your decision will
7 involve making judgments about the testimony of the witnesses
8 you have listened to and observed. In making these judgments,
9 you should carefully scrutinize all of the testimony of each
10 witness, the circumstances under which each witness testified,
11 and any other matter in evidence that may help you decide the
12 truth and the importance of each witness's testimony. For
13 example, was the testimony of a witness corroborated by the
14 testimony of another witness or of another exhibit or a
15 recording which was received in evidence?

16 Your decision whether or not to believe a witness may
17 depend on how the witness impressed you. Was the witness
18 candid, frank and forthright, or did the witness seem to be
19 evasive or suspect in some way? How did the way the witness
20 testified on direct examination compare with how the witness
21 testified on cross-examination? Was the witness consistent or
22 contradictory? Did the witness appear to know what he or she
23 was talking about? Did the witness strike you as someone who
24 was trying to report his knowledge accurately? What was the
25 witness's demeanor like? These are examples of the kinds of

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1 common sense questions you should ask yourselves in deciding
2 whether a witness is or is not truthful.

3 In addition, you may consider whether a witness had
4 any possible bias or relationship with a party or any possible
5 interest in the outcome of the case. Such a bias,
6 relationship, or interest does not necessarily make the witness
7 unworthy of belief. These are simply factors that you may
8 consider.

9 In making a determination of witness credibility, you
10 may consider whether the witness purposefully made a false
11 statement or whether it was an innocent mistake. You may also
12 consider whether an inconsistency concerns an important fact or
13 merely a small detail, as well as whether the witness had an
14 explanation for the inconsistency, and if so, whether that
15 explanation appealed to your common sense. If you find that a
16 witness has testified falsely as to any material fact, you may
17 reject the witness's testimony in its entirety or you may
18 accept those parts that you believe to be truthful or that are
19 corroborated by other independent evidence in the case.
20 Further, you may consider whether a witness has been previously
21 untruthful, including lying under oath in another proceeding,
22 in determining how much of his or her testimony, if any, you
23 wish to believe.

24 You should also consider whether the witness had an
25 opportunity to observe the facts that the witness testified

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1 about, and whether the witness's recollection of the facts
2 stands up in light of the other evidence in this case.

3 In other words, what you must try to do in deciding
4 credibility is to size up a person just as you would in any
5 important matter where you are trying to decide if a person is
6 being truthful, straightforward, and accurate in his
7 recollection.

8 Now a word about the preparation of witnesses. You
9 have heard testimony during the trial that witnesses --

10 A JUROR: A little bit louder again, please.

11 THE COURT: Okay. Thank you.

12 Now a word about preparation of witnesses. That
13 better?

14 You have heard testimony during the trial that the
15 witnesses have discussed the facts of the case and their
16 testimony with lawyers before the witnesses appeared in court.
17 You may consider that fact when you are evaluating a witness's
18 credibility. But there is nothing either unusual or improper
19 about a witness meeting with lawyers before testifying so that
20 the witness can be aware of all of the subjects that will be
21 covered, focus on those subjects, and have the opportunity to
22 review the relevant exhibits and documents before being
23 questioned about them. Such consultations help conserve your
24 time and the Court's time as well. The weight you give to the
25 fact or the nature of the witness's preparation for his or her

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1 testimony and what inferences you draw from such preparation
2 are matters completely within your discretion.

3 It is for you, the jury, and for you alone, not the
4 lawyers or the witnesses or me as the judge to decide the
5 credibility of witnesses who appear here and the weight that
6 their testimony deserves. After making your own judgment or
7 assessment concerning the credibility of a witness, you can
8 then attach such importance or weight to his or her testimony,
9 if any, that you feel it deserves. You will then be in a
10 position to decide whether the government has proved the
11 charges beyond a reasonable doubt.

12 Now this is an instruction on adverse inferences.
13 You've heard testimony from a government witness named Michael
14 who the CIA place on enforced administrative leave in
15 August 2019. The government only disclosed this information to
16 the defendant in the course of the trial. I instruct you that
17 the government should have disclosed the information regarding
18 Michael's enforced administrative leave to the defendant sooner
19 in time.

20 In evaluating the evidence, you can decide what
21 weight, if any, to give to the government's conduct on this
22 issue. You may also consider whether Michael's appearance in
23 court and his testimony for the government was influenced by
24 his taking an enforced leave.

25 Law enforcement officials. You have heard the

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1 testimony from a number of law enforcement officials. The
2 government's law enforcement witnesses do not deserve any more
3 or less consideration or greater or lesser weight than that of
4 any other witness. In this context, it is appropriate for the
5 defense counsel to try to attack the credibility of such a
6 witness on the ground that his or her testimony may be colored
7 by a personal or professional interest in the outcome of the
8 case.

9 It is up to you to accept or reject the testimony of
10 each law enforcement witness, and to give such witness the
11 weight, if any, it deserves.

12 We've also heard from a number of witnesses who are
13 currently or were previously employed by the Central
14 Intelligence Agency, the CIA. Some of these people work
15 directly as officers of the CIA, and some of them work as
16 contractors performing work for the CIA.

17 I've allowed some of these witnesses to testify either
18 by using a made-up name, a pseudonym, or just their first name.
19 The disclosure of the witness's true names and what they look
20 like could potentially compromise their work at the CIA.
21 That's why those precautions were taken, but you should weigh
22 the testimony of those witnesses just as you would any other
23 witness, and not weigh it differently because they testified
24 using a pseudonym or used their first name only. Moreover, you
25 should not consider the fact that I allowed these witnesses to

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1 testify in this way as an expression of my opinion as to any of
2 the facts of this case. Again, it is your job and your job
3 alone to decide the facts of the case.

4 Bias and hostility. In connection with your
5 evaluation of the credibility of the witnesses, you should
6 specifically consider evidence of resentment or anger which
7 some government witnesses may have toward the defendant.
8 Evidence that a witness is biased, prejudiced, or hostile
9 toward the defendant requires you to view that witness's
10 testimony with caution, to weigh it with care, and subject it
11 to close and searching scrutiny.

12 In this case, you have heard testimony from
13 individuals who testified as experts in particular fields. An
14 expert is someone who by education or experience has acquired
15 learning or experience in a science or a specialized area of
16 knowledge. Here the specialized areas and corresponding
17 experts were: WikiLeaks, that's Mr. Paul Rosenzweig; the
18 system of classifying national security materials, Mr. Mark
19 Bradley; and the forensic analysis of computers and other
20 electronic devices, Mr. Patrick Leedom and Mr. Michael Berger.

21 Your role in judging credibility applies to experts as
22 well as to other witnesses. You should consider the expert
23 opinions that were received in evidence in this case and give
24 them as much or as little weight as you think it deserves. If
25 you should decide that the opinion of an expert was not based

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1 on sufficient education or experience or on sufficient data, or
2 if you should conclude that the trustworthiness or credibility
3 of an expert is questionable for any reason, or if the opinion
4 of the expert was outweighed in your judgment by other evidence
5 in the case, then you might disregard the opinion of the expert
6 entirely or in part.

7 If, however, you find that the opinion of the expert
8 is based on sufficient data, education and experience, and the
9 other evidence does not give you reason to doubt the expert's
10 conclusions, then you could be justified in relying on that
11 expert's testimony.

12 A word or two about the cooperating witness. You
13 heard testimony from a witness, Carlos Betances, who testified
14 that he pled guilty to criminal conduct and is now cooperating
15 with the government. The law permits the use of testimony from
16 a cooperating witness. The government frequently must use such
17 testimony in criminal prosecution. I instruct you that you are
18 to draw no conclusions or inferences of any kind about the
19 guilt of the defendant on trial from the fact that this
20 prosecution witness pled guilty to other charges.

21 Because of the possible interest a cooperating witness
22 may have in testifying, let me say a few things that you may
23 want to consider during your deliberations on the subject of
24 the cooperating witness. Cooperating witness testimony must be
25 scrutinized with special care and caution. The cooperating

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1 witness is facing sentencing for his own crimes, and is hoping
2 for a reduced sentence. For a cooperating witness, the
3 government decides whether or not to file a motion for a
4 reduced sentence, that is the 5K letter that was mentioned
5 here. And the sentencing court, according to its own
6 determination, decides what sentence to ultimately impose. It
7 does not follow, however, that simply because a person has
8 admitted participation in one or more crimes he is not capable
9 of giving a truthful version of what happened. But the
10 cooperating witness might be motivated by reward or personal
11 gain. Would the cooperator gain more by lying or telling the
12 truth?

13 I must caution you that it is of no concern of yours
14 why the government made an agreement with the witness. Your
15 sole concern is to decide whether the witness has given
16 truthful testimony in this case before you.

17 A word about persons who are not on trial. Some of
18 the people who may have been involved in the events leading up
19 to this trial are not on trial themselves. This does not
20 matter. You may not draw any inference, favorable or
21 unfavorable, toward the government or the defendant from the
22 fact that certain persons other than the defendant are not on
23 trial here. Those matters are wholly outside your concern and
24 have no bearing on your function as jurors.

25 Particular investigative techniques are not required.

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1 You may have heard references to the fact that certain
2 investigative techniques were used and that others were not
3 used by the government. You may consider these facts in
4 deciding whether the government has met its burden of proof,
5 because, as I told you, you should look to all of the evidence
6 or lack of evidence in deciding whether the defendant is
7 guilty. However, there is no legal requirement that the
8 government prove its case by any particular means, and you are
9 not to speculate as to why the government used the techniques
10 it did or why it did not use other techniques. The government
11 is not on trial. Law enforcement techniques are not your
12 concern.

13 Your concern is to determine whether or not, based on
14 the evidence or lack of evidence here in this case, the guilt
15 of Mr. Schulte has been proven beyond a reasonable doubt.

16 You heard some evidence from searches. You heard
17 testimony in this case about the evidence seized in connection
18 with searches conducted by law enforcement officers, the FBI.
19 Evidence obtained from these searches was properly admitted in
20 this case and may be properly considered by you. Whether you
21 approve or disapprove of how the evidence was obtained should
22 not enter into your deliberations, because I instruct you now
23 that the government's use of the evidence is entirely lawful.

24 You must, therefore, give this evidence full
25 consideration along with all the other evidence in the case, in

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1 determining whether the government has proved the guilt of
2 Mr. Schulte beyond a reasonable doubt.

3 Redaction of evidentiary items. We have, among the
4 exhibits received in evidence, some documents that are
5 redacted. "Redacted" means that part of the document was taken
6 out. You are to concern yourself only with the part of the
7 item that has been admitted into evidence. You should not
8 consider any possible reason why the other parts have been
9 deleted.

10 Charts and summaries. During the trial there were
11 charts and summaries shown to you. These charts and summaries
12 were shown to you in order to make the other evidence more
13 meaningful and to aid you in considering the evidence. They
14 are no better than the testimony or the documents upon which
15 they are based, and are not themselves independent evidence.
16 Therefore, you are to give no greater consideration to these
17 schedules or summaries than you would give to the evidence upon
18 which they are based.

19 It is for you to decide whether the charts, schedules
20 or summaries correctly present the information contained in the
21 testimony and in the exhibits on which they were based. You
22 are entitled to consider the charts, schedules and summaries if
23 you find that they are of assistance to you in analyzing and
24 understanding the evidence.

25 Stipulations. You have heard evidence in the form of

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1 stipulations of testimony and stipulations of evidence read to
2 you from GX 3002, GX 3003, GX 3004, GX 3005, and Defense
3 Exhibit O. A stipulation of testimony is an agreement among
4 the parties that, if called as a witness, the person would give
5 certain testimony. You must accept as true the fact that the
6 witness would have given that testimony. It is for you,
7 however, to determine the effect to be given to that testimony.

8 You've also heard evidence the form of stipulations of
9 fact. The stipulation of fact is an agreement among the
10 parties that a certain fact is true. You should regard such
11 agreed facts as true. It is for you to determine the effect to
12 be given to any stipulated fact.

13 All the available evidence need not be introduced.
14 The law does not require any party to call as a witness all
15 persons who may have been present at any time or place involved
16 in the case, or who may appear to have some knowledge of the
17 matter in issue at this trial. Nor does the law require any
18 party to the produce as exhibits all relevant papers and things
19 available to either party during the trial. During summations
20 we learned there were over 18 or 19 witnesses who testified,
21 and thousands of documents. You have to base your decision
22 based on what has been submitted in evidence.

23 With regard to motive. Proof of motive is not a
24 necessary element of the crimes for which the defendant is
25 charged. Proof of motive does not establish guilt nor does a

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1 lack of proof of motive establish that a defendant is not
2 guilty. If the guilt of a defendant is shown beyond a
3 reasonable doubt, it is immaterial what the motive for the
4 crime may be or whether any motive is shown. But the presence
5 or absence of motive is a circumstance that you may consider as
6 bearing on the intent or actions of the defendant.

7 The theory of the defense. The defense contends that
8 Mr. Schulte did not improperly gather, steal, disclose or
9 attempt to disclose national defense information. Nor did he
10 knowingly or intentionally exceed his authorized access to any
11 CIA computer system or files. The defense further contends
12 that Mr. Schulte did not obstruct justice or willfully make any
13 material false statements to the FBI. Finally, Mr. Schulte
14 maintains that he did not willfully violate any court order.

15 If the government fails to prove the defendant's guilt
16 beyond a reasonable doubt, you must acquit Mr. Schulte.

17 Mr. Schulte did not testify in this case. Under our
18 Constitution, the defendant has no obligation to testify or to
19 present any evidence, because it is the government's burden to
20 prove the defendant guilty beyond a reasonable doubt. The
21 right of a defendant not to testify is an important part of our
22 Constitution.

23 As I stated earlier, the government's burden to prove
24 the defendant guilty remains with the prosecution throughout
25 the entire trial and never shifts to Mr. Schulte. He is never

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1 required to prove that he is innocent.

2 You may not speculate as to why Mr. Schulte did not
3 testify. There are many reasons why a defendant may decide not
4 to testify. You are not to attach any significance to the fact
5 that Mr. Schulte did not testify. No adverse inference against
6 him may be drawn by you because he did not take the witness
7 stand. You may not consider this against Mr. Schulte in any
8 way in your deliberations in the jury room.

9 That takes care of the evidentiary portion of the jury
10 charge. Now I'm going to turn to the substantive law.

11 The defendant, Joshua Schulte, has been charged in a
12 10-count indictment. The indictment in this case is not
13 evidence, as I've already told you. It merely describes the
14 charges made against the defendant. It is a set of
15 accusations. It may not be considered by you as evidence of
16 the guilt of Mr. Schulte. Only the evidence or lack of
17 evidence decides that issue.

18 The indictment charges that in or about 2016, the
19 defendant allegedly took national defense information from the
20 CIA computer systems without authorization and transmitted that
21 information to WikiLeaks, which posted the information online
22 in 2017. Specifically this is Counts One, Two, Four, Five, Six
23 and Seven. Those charges, the WikiLeaks charges, account for
24 six of the counts in the indictment. The indictment further
25 charges Mr. Schulte with one count, Count Three, of unlawful

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1 disclosure and attempted disclosure of national defense
2 information while he was in the Metropolitan Correctional
3 Center, or MCC, a federal detention center. Finally, the
4 indictment charges Mr. Schulte with two counts, Counts Eight
5 and Nine, relating to false statements he allegedly made to the
6 FBI during its investigation. And one count, Count 10, related
7 to his alleged violation of a protective order entered by this
8 Court in 2017. The government must prove all these charges in
9 the indictment beyond a reasonable doubt.

10 You will note that the indictment alleges that certain
11 acts occurred on or about various dates. I instruct you that
12 it does not matter if the indictment charges that a specific
13 act occurred on or about a certain date or month and the
14 evidence indicates that in fact it was on another date. The
15 law requires only a substantial similarity between the dates
16 alleged in the indictment and the dates established by the
17 evidence.

18 Count One charges illegal gathering of national
19 defense information. Count One charges the defendant, in or
20 about 2016, with the illegal gathering of national defense
21 information in violation of Title 18, United States Code,
22 Section 793(b). In order to convict the defendant of Count
23 One, the government must prove each of the following three
24 elements beyond a reasonable doubt:

25 First, that in or about 2016, the defendant copied,

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1 took, made, or obtained a document, writing, or note, to wit,
2 the defendant took information maintained by an intelligence
3 agency of the United States.

4 Second, that the information was connected to the
5 national defense.

6 Third, that the defendant acted with the purpose of
7 obtaining information respecting the national defense and with
8 the intent or with the reason to believe that the information
9 was to be used to the injury of the United States or used to
10 the advantage of a foreign country.

11 The first element of Count One is taking information.
12 The first element of the offense that the government must prove
13 beyond a reasonable doubt is that the defendant copied, took,
14 made or obtained document, writing or note, to wit, the
15 defendant took information maintained by an intelligence agency
16 of the United States as charged in the indictment.

17 The second element is the national defense
18 information. The second element of the offense that the
19 government must prove beyond a reasonable doubt is that the
20 information that the defendant is charged with taking is
21 connected with the national defense of the United States.

22 You must determine whether the information is directly
23 and reasonably connected with the national defense. The term
24 "national defense" is a broad term that refers to the United
25 States military and naval establishments, intelligence, and to

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1 all related activities of national preparedness.

2 To qualify as national defense information, the
3 government must prove that the material is closely held by the
4 United States government. Where the information has been made
5 public by the United States government and is found in sources
6 lawfully available to the general public, it is not closely
7 held. Similarly, where sources of information are lawfully
8 available to the public at the time of the claimed violation
9 and the United States has made no effort to guard such
10 information, the information itself is not closely held. Only
11 information relating to our national defense that is not
12 lawfully available to the public at the time of the claimed
13 violation falls within the prohibition of this section.

14 In determining whether material is closely held, you
15 may consider whether it has been classified by appropriate
16 authorities and whether it remained classified on the dates
17 pertinent to the indictment. Although you may consider whether
18 information has been classified in determining whether it has
19 been closely held, I caution you that the mere fact that
20 information is classified does not mean that information
21 qualifies as national defense information. Whether the
22 information is connected with the national defense is a
23 question of fact that you, the jury, must determine following
24 the instructions that I have given you about what those terms
25 mean.

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1 The third element in Count One is knowledge and
2 intent. The third element of the offense that the government
3 must establish beyond a reasonable doubt is that the defendant
4 acted for purpose of obtaining information respecting the
5 national defense. The government must also prove beyond a
6 reasonable doubt that the government acted with intent or with
7 reason to believe that the information was to be used to the
8 injury of the United States, or used to the advantage of a
9 foreign country. The government is required to prove that the
10 defendant acted with criminal intent, that is, he acted in bad
11 faith, and with a deliberate purpose either to disregard or
12 disobey the law. In considering whether or not the defendant
13 had the intent or reason to believe that the information would
14 be used to the injury of the United States or to provide an
15 advantage to a foreign country, you may consider the nature of
16 the documents or the information involved. I emphasize that to
17 convict the defendant of Count One, you must find that the
18 defendant had the intent or reason to believe that the
19 information would be used against the United States, not just
20 that it could be used. The government --

21 MS. SHROFF: Your Honor, I'm sorry to interrupt, but I
22 think the jury is having trouble hearing you again.

23 THE COURT: Who's having trouble? How is this?
24 Better, much better? Okay.

25 The government does not have to prove that the intent

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1 was both to injure the United States and to provide an
2 advantage to a foreign country. The statute reads in the
3 alternative. Further, the country to whose advantage the
4 information would be used need not necessarily be an enemy of
5 the United States. The statute does not distinguish between
6 friend and enemy.

7 If you find beyond a reasonable doubt, therefore, that
8 the defendant acted with the intent or with the reason to
9 believe that the information would be used to injure the United
10 States or to provide an advantage to a foreign country, the
11 third element is satisfied.

12 Count Two. Elements. The illegal transmission of
13 unlawfully possessed national defense information.

14 Count Two charges the defendant, in or about 2016,
15 with unauthorized possession of information relating to
16 national defense and transmitting it to persons not entitled to
17 receive it in violation of 18 U.S. Code Section 793(e). In
18 order to establish a violation of Section 793(e), the
19 government must prove each of the following four elements
20 beyond a reasonable doubt:

21 First, that in or about 2016, the defendant had
22 unauthorized possession of, access to, or control over the
23 document or information in question;

24 Second, that the defendant or information in question
25 was related to the national defense;

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1 Third, that the defendant had reason to believe that
2 the document or information could be used to the injury of the
3 United States or to the advantage of a foreign nation; and

4 Fourth, that in or about 2016, the defendant willfully
5 communicated or delivered or transmitted or caused to be
6 communicated, delivered or transmitted the document or
7 information to a person who was not entitled to receive it.

8 Count Two, the first element dealing with possession.
9 The first element of Count Two that the government must prove
10 beyond a reasonable doubt is that the defendant had
11 unauthorized possession of or control over or access to the
12 document or information in question.

13 The word "possession" is a commonly used and commonly
14 understood word. Basically it means the act of having or
15 holding property or the detention of property in one's power or
16 command. Possession may mean actual physical possession or
17 constructive possession. A person has constructive possession
18 of something if he knows where it is and can get it any time he
19 wants or otherwise can exercise control over it. A person has
20 unauthorized possession of something if he is not entitled to
21 have it.

22 Count two, second element, the national defense
23 information. The second element of Count Two that the
24 government must prove beyond a reasonable doubt is that the
25 document or information in question was connected with the

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1 national defense of the United States.

2 I previously instructed you regarding the meaning of
3 national defense in Count One. Those instructions apply here
4 as well.

5 Count two, the third element, prejudice to the United
6 States. The third element of Count Two that the government
7 must prove beyond a reasonable doubt is that the defendant had
8 reason to believe that the information could be used to the
9 injury of the United States or to the advantage of a foreign
10 nation.

11 As instructed with Count One, with respect to reason
12 to believe, you may consider the nature of the documents or
13 information involved. For this count, unlike Count One, you
14 need not determine that the defendant had reason to believe
15 that the information would be used against the United States,
16 only that it could be used.

17 The fourth element deals with willfully delivered
18 information. The fourth element of Count Two that the
19 government must establish beyond a reasonable doubt is that the
20 defendant willfully communicated or transmitted the document in
21 question to a person not entitled to receive it.

22 In deciding whether a person was entitled to receive
23 information, you may consider all the evidence introduced at
24 the trial, including any evidence concerning the classification
25 status of the document or testimony concerning limitations on

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1 access to the document.

2 An act is done willfully if it is done voluntarily and
3 intentionally and with the specific intent to do something the
4 law forbids, that is to say, with a bad purpose either to
5 disobey or disregard the law.

6 The government not need prove that the defendant
7 actually delivered the information himself -- it is enough to
8 prove that he caused the act to be done.

9 I remind you now, and will remind you again, that it
10 is the government's burden to establish each element of each of
11 these counts beyond a reasonable doubt. The government must
12 prove each element of each count beyond a reasonable doubt. If
13 you find the government has not proved each of the elements of
14 a count beyond a reasonable doubt, you must acquit the
15 defendant on that count. Also, proof of guilt on one count
16 does not establish proof of guilt on any other count. You must
17 consider each count and each element of each count
18 individually.

19 Count Three deals with illegal transmission and
20 attempted transmission of unlawfully possessed national defense
21 information. Count Three charges that from at least in or
22 about December 2017, up to and including at least in or about
23 October 2018, the defendant having unauthorized possession of,
24 access to, or control over information relating to national
25 defense, willfully transmitted or communicated and attempted to

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1 transmit or communicate information to persons not entitled to
2 receive it in violation of 18, United States Code, Section
3 793(e).

4 In order to establish a violation of Section 793(e),
5 the government must prove each of the following four elements
6 beyond a reasonable doubt:

7 First, that the defendant had unauthorized possession
8 of or access to or control over the document, writing, note or
9 information in question;

10 Second, that the document, writing, note or
11 information was related to the national defense;

12 Third, that the defendant had reason to believe that
13 the document, writing, note or information could be used to the
14 injury of the United States or to the advantage of a foreign
15 nation; and

16 Fourth, that the defendant willfully communicated,
17 delivered, transmitted, or caused to be communicated,
18 delivered, transmitted, or attempted to communicate, deliver,
19 transmit, or cause to be communicated, delivered, or
20 transmitted the same to a person not entitled to receive it.

21 Count Three. The first element deals with possession.
22 The first element of Count Three that the government must prove
23 beyond a reasonable doubt is that the defendant had
24 unauthorized possession of, access to, or control over the
25 document, writing, note or information in question.

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1 I have already instructed you on the meaning of the
2 word "possession" in connection with Count Two. That
3 instruction applies here.

4 As instructed on Count Two, a person has unauthorized
5 possession of something if he is not entitled to have it.

6 The second element in Count Three is the national
7 defense information. The second element of Count Three that
8 the government must prove beyond a reasonable doubt is that the
9 document, writing, note or information in question was
10 connected with the national defense of the United States.

11 You are reminded that you must determine whether the
12 information is directly and reasonably connected with the
13 national defense as I instructed you in Count One.

14 The third element deals with prejudice to the United
15 States. The third element of Count Three that the government
16 must establish beyond a reasonable doubt is that the defendant
17 had reason to believe that the document, writing, note or
18 information could be used to the injury of the United States or
19 to the advantage of a foreign nation.

20 Count Three, the fourth element deals with willfully
21 delivered information. The fourth element of Count Three that
22 the government must establish beyond a reasonable doubt is that
23 the defendant willfully communicated or transmitted the
24 document, writing, note or information in question to a person
25 not entitled to receive it.

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1 In deciding whether a person was entitled to receive
2 the document or information, you may consider all the evidence
3 introduced at trial, including any evidence concerning the
4 classification status of the document or testimony concerning
5 limitations on the access to the document.

6 An act is done willfully if it is done voluntarily and
7 intentionally and with the specific intent to do something the
8 law forbids, that is to say, with a bad purpose either to
9 disobey or disregard the law.

10 For this count, the government not need prove that the
11 defendant actually delivered or transmitted the information.
12 It is enough to prove that the defendant merely attempted to do
13 so. Further, the government need not prove that the defendant
14 did the act himself. It is enough to prove that he caused the
15 act to be done.

16 Count Three also has an attempt charge. Now, with
17 regard to Count Three, illegal transmission of national defense
18 information, in or about 2017, up to and including at least in
19 or about October 2018, if you find that the government has
20 proved the elements of this crime as I have described it, you
21 should find the defendant guilty on this count. However, with
22 respect to Count Three only, even if you find that the
23 government has not proved beyond a reasonable doubt that the
24 defendant illegally transmitted national defense information,
25 you may find the defendant guilty of Count Three if you find

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1 that the government has proven beyond a reasonable doubt that
2 the defendant attempted to illegally transmit national defense
3 information.

4 To prove the charge of attempted illegal transmission
5 of national defense information, the government must prove each
6 of the following two elements beyond a reasonable doubt:

7 First, the defendant intended to commit the crime of
8 illegally transmitting national defense information; and

9 Second, the defendant did some act that was a
10 substantial step in an effort to bring about or accomplish the
11 crime.

12 Mere intention to commit a specific crime does not
13 amount to an attempted crime. In order to convict the
14 defendant of an attempt to illegally transmit national defense
15 information, you must find beyond a reasonable doubt that he
16 intended to commit the crime charged, and that he took some
17 action which was a substantial step toward the commission of
18 that crime.

19 In determining whether the defendant's actions
20 amounted to a substantial step toward the commission of the
21 crime, it is necessary to distinguish between mere preparation
22 on the one hand, and the actual doing of the criminal deed on
23 the other. Mere preparation, which may consist of planning the
24 offense or of devising, obtaining or arranging a means for its
25 commission is not an attempt, although some preparation may

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1 amount to an attempt. The acts of a person who intends to
2 commit a crime will constitute an attempt when the acts
3 themselves clearly indicate an intent to commit the crime, and
4 the acts are a substantial step in the course of the conduct
5 planned to culminate in the commission of the crime.

6 Count Four, unauthorized access to computer to obtain
7 classified information. Count Four charges that in or about
8 2016, the defendant knowingly accessed a computer and exceeded
9 his authorized access in order to obtain protected or
10 restricted information in violation of Title 18, United States
11 Code, Section 1030(a)(1). In order to convict the defendant of
12 Count Four, the government must establish each of the following
13 four elements beyond a reasonable doubt:

14 First, the defendant accessed a computer with
15 authorization, but exceeded his authority in accessing the
16 information in question;

17 Second, that the defendant knowingly accessed the
18 computer;

19 Third, that the defendant obtained information
20 protected against unauthorized disclosure for reasons of
21 national defense or foreign relations, and that the defendant
22 had reason to believe that the information could be used
23 against the interests of the United States or to the advantage
24 of a foreign nation; and

25 Fourth, that the defendant willfully communicated,

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1 delivered, transmitted, or caused to be communicated,
2 delivered, or transmitted, or attempted to communicate,
3 deliver, or transmit the information to a person who was not
4 entitled to receive it.

5 Now the first element in Count Four is unauthorized
6 access. The first element that the government must prove
7 beyond a reasonable doubt is that the defendant accessed a
8 computer with authorization, but exceeded his authority in
9 accessing the information in question.

10 As defined in the statute, a computer means an
11 electronic, magnetic, optical, electromechanical, or other high
12 speed data processing device performing logical, arithmetic, or
13 storage functions, and includes any data storage facility or
14 communications facility directly related to or operating in
15 conjunction with such device. The term "computer" does not
16 include an automated typewriter or typesetter, a portable
17 handheld calculator, or other similar devices.

18 In this case, the government charges that the
19 defendant, while authorized to access the computer, exceeded
20 his authority in accessing the information in question, here
21 the Altabackups. This requires the government to prove beyond
22 a reasonable doubt that the defendant had access to the
23 computer, and used that access to obtain or alter information
24 in the computer that the defendant was not entitled to obtain
25 or alter.

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1 An individual does not exceed authorized access when
2 he accesses a computer to obtain information that he is
3 authorized to access, even if he does so for an improper
4 purpose.

5 The second element in Count Four is knowledge. The
6 second element that the government must prove beyond a
7 reasonable doubt is that the defendant acted knowingly in
8 accessing the computer outside the scope of his authority.

9 "Knowingly" means to act voluntarily and deliberately,
10 rather than mistakenly or inadvertently. The question of
11 whether a person acted knowingly is a question of fact for you
12 to determine, like any other fact question. The question
13 involves one's state of mind.

14 Direct proof of knowledge is almost never available.
15 It would be a rare case when it would be shown that a person
16 wrote or stated that as of a given time in the past, he
17 committed an act with knowledge. Such proof is not required.
18 The ultimate fact of knowledge, though subjective, may be
19 established by circumstantial evidence, based upon a person's
20 outward manifestations, his words, his conduct, his acts and
21 all the surrounding circumstances disclosed by the evidence and
22 the rational or logical inferences that may be drawn from them.

23 Circumstantial evidence, if believed, is of no less
24 value than direct evidence. In either case, the essential
25 elements of the crime charged must be established beyond a

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1 reasonable doubt.

2 As a practical matter then, in order to sustain the
3 charges against the defendant, the government must establish
4 beyond a reasonable doubt that he knew that his accessing of a
5 computer was outside the scope of the authorization granted.

6 The government can also meet its burden of showing
7 that the defendant had actual knowledge of the accessing of a
8 computer without authorization if it establishes beyond a
9 reasonable doubt that he acted with deliberate disregard of
10 whether he was so authorized. Alternatively, the government
11 may satisfy its burden of proving knowledge by establishing
12 beyond a reasonable doubt that the government acted with an
13 awareness of the high probability that he was acting without
14 authorization, unless the defendant actually believed that he
15 had authorization to access a computer in the manner described
16 in the indictment. This guilty knowledge, however, cannot be
17 established by demonstrating that the defendant was merely
18 negligent or foolish.

19 To conclude on this element, if you find that the
20 defendant did not know he was acting without authorization,
21 then you should find the defendant not guilty.

22 Count Four. The third element deals with protected
23 information.

24 The third element that the government must prove
25 beyond a reasonable doubt is that the defendant obtained

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1 information protected against unauthorized disclosure for
2 reasons of national defense or foreign relations.

3 The United States may determine that information
4 requires protection against unauthorized disclosure for reasons
5 of national defense or foreign relations either by Executive
6 Order or by statute.

7 This element requires that at the time he obtained the
8 protected information, the defendant must have had reason to
9 believe that the information could be used against the
10 interests of the United States or to the advantage of a foreign
11 nation.

12 The fourth element in Count Four deals with willful
13 communication. The fourth element of Count Four that the
14 government must establish beyond a reasonable doubt is that the
15 defendant willfully communicated, delivered, transmitted or
16 caused to be communicated, delivered, or transmitted or
17 attempted to communicate, deliver, or transmit the protected
18 information obtained to a person who was not entitled to
19 receive it. To act willfully means to act knowingly and
20 purposefully, with an intent to do something the law forbids,
21 that is to say, with a bad purpose either to disobey or
22 disregard the law.

23 Count Five deals with the theft of government
24 property. Count Five charges the defendant with theft of
25 government property in or about 2016 in violation of Title 18,

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1 United States Code, Section 641. In order to convict the
2 defendant of Count Five, the government must prove each of the
3 following four elements beyond a reasonable doubt:

4 First, that the property described in the indictment
5 belonged to the United States government;

6 Second, that the defendant stole, embezzled or
7 knowingly converted that property;

8 Third, that the defendant acted knowingly and
9 willfully with the intent to deprive the government of the
10 United States of the use and benefit of the property; and

11 Fourth, that the value of the property was greater
12 than \$1,000.

13 The first element here of Count Five is the property
14 of the United States. The first element the government must
15 prove beyond a reasonable doubt is that the property described
16 in the indictment belonged to the United States government.

17 To satisfy this element, the government must prove
18 that the information contained in the Altabackups allegedly
19 stolen was a thing of value to the United States. That means
20 that at the time the property was allegedly stolen, embezzled,
21 or knowingly converted, the United States government or an
22 agency of the United States government had either title to,
23 possession of, or control over the property.

24 The second element that the government must prove
25 beyond a reasonable doubt is that the defendant stole,

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1 embezzled, or knowingly converted the property. To steal
2 property means to take someone else's property without the
3 owner's consent and with the intent to deprive the owner of the
4 value of that property.

5 To embezzle property means to voluntarily and
6 intentionally take or convert to one's own use money or
7 property of another after that money or property lawfully came
8 into the possession of the person taking it by virtue of some
9 office, employment or position of trust.

10 To knowingly convert property means to use the
11 property in an unauthorized manner in a way that seriously
12 interfered with the government's right to use and to control
13 its own property, knowing that the property belong to the
14 United States and knowing that such use was unauthorized.

15 The third element of Count Five deals with intent.
16 The third element of the government must prove beyond a
17 reasonable doubt is that the defendant acted knowingly and
18 willfully with the intent to deprive the government of the use
19 and benefit of its property.

20 To act knowingly means to act intentionally and
21 voluntarily and not because of ignorance, mistake, accident or
22 carelessness. To act willfully means to act with knowledge
23 that one's conduct is unlawful and with the intent to do
24 something the law forbids, that is to say, with a bad purpose
25 or to disobey or disregard the law. Whether the defendant

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1 acted knowingly and willfully may be proved by the defendant's
2 conduct and by all the circumstances surrounding the case.

3 Count Five, the fourth element, the value of the
4 property. The fourth and final element that the government
5 must prove beyond a reasonable doubt is that the value of the
6 property stolen, embezzled, or knowingly converted was greater
7 than \$1,000. The word "value" means face, par or market value,
8 or cost price, either wholesale or retail, whichever is
9 greater. "Market value" means the price a willing buyer would
10 pay a willing seller at the time the property was stolen. In
11 determining the value of the property stolen, you may consider
12 the aggregate or total value of the property referred to in the
13 indictment. If you find that the aggregate value is \$1,000 or
14 less, then you must find the defendant not guilty. On the
15 other hand. If you find the aggregate value to be greater than
16 \$1,000, then this element is satisfied.

17 I remind you again, it is the government's burden to
18 establish every element of each of these counts beyond a
19 reasonable doubt. The government must prove each element of
20 each count beyond a reasonable doubt. If you find the
21 government has not proved each of the elements of a count
22 beyond a reasonable doubt, you must acquit the defendant on
23 that count. Also, proof of guilt on one count does not
24 establish proof of guilt on another count. You must consider
25 each count, and each element of each count, on its own.

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1 THE COURT: Now, Count Six deals with unauthorized
2 access to a computer to obtain information from a department or
3 agency of the United States.

4 Count Six charges the defendant, in or about 2016,
5 intentionally accessed a computer and exceeded his authorized
6 access in order to obtain information from a department or
7 agency of the United States government, in violation of Title
8 18, United States Code Section 1030(a)(2)(B). In order to
9 prove the defendant guilty of Count Six, the government must
10 prove each of the following three elements beyond a reasonable
11 doubt:

12 First, that the defendant accessed a computer with
13 authorization, but exceeded his authority in accessing the
14 information in question;

15 Second, that the defendant acted intentionally; and

16 Third, that the defendant obtained information from
17 any department or agency of the United States.

18 The first element deals with unauthorized access.

19 The first element that the government must prove
20 beyond a reasonable doubt is that the defendant accessed a
21 computer with authorization, but exceeded his authority in
22 accessing the information in question.

23 I have already instructed you with regard to the
24 definition of a "computer" in Count Four. That same definition
25 applies here.

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1 In this case, the government charges that the
2 defendant, while authorized to access the computer, exceeded
3 his authority in accessing the information in question. This
4 requires the government to prove beyond a reasonable doubt that
5 the defendant had access to the computer, and used that access
6 to obtain or alter the information in the computer that the
7 defendant was not entitled to obtain or alter.

8 An individual does not exceed authorized access when
9 he accesses a computer to obtain information that he is
10 authorized to access -- even if he does so for an improper
11 purpose.

12 The second element in Count Six deals with intentional
13 conduct.

14 The second element that the government must prove
15 beyond a reasonable doubt is that the defendant acted
16 intentionally in accessing a computer either without
17 authorization or outside the scope of authority.

18 "Intentionally" means to act deliberately and purposefully.
19 That is, the defendant's acts must have been the product of the
20 defendant's conscious objective, rather than the product of a
21 mistake or accident. The question of whether a person acted
22 intentionally is a question of fact for you to determine, like
23 any other fact question. The question involves one's state of
24 mind. As I told you, direct proof of intent is almost never
25 available. It would be a rare case when it could be shown that

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1 a person wrote or stated that as of a given time in the past he
2 committed an act intentionally. Such proof is not required.
3 The ultimate fact of intent, though subjective, may be
4 established by circumstantial evidence, based upon a person's
5 outward manifestations, his words, his conduct, his acts and
6 all the surrounding circumstances disclosed by the evidence and
7 the rational or logical inferences that may be drawn from them.

8 As a practical matter, then, in order to prove Count
9 Six, the government must establish beyond a reasonable doubt
10 that the defendant knew that his accessing of a computer was
11 unauthorized or that he knew that his accessing of a computer
12 was outside the scope of authority granted, but did so
13 anywhere. To conclude on this element, if you find that the
14 defendant did not know he was acting without authority or
15 outside the scope of his authority, or if he did not
16 intentionally access the computer, then you should acquit the
17 defendant.

18 Count Six: Third element -- U.S. government
19 information.

20 The third element that the government must prove
21 beyond a reasonable doubt is that the defendant obtained
22 information contained in a computer of any department or agency
23 of the United States. The CIA is a department or agency of the
24 United States. However, it is for you to determine if the
25 government has proven that, without authorization, the

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1 defendant obtained information contained in a computer of the
2 CIA.

3 Count Seven: Elements -- causing transmission of a
4 harmful computer program, information, code or command.

5 Count Seven charges the defendant, from at least in or
6 about March 2016, up to and including at least in or about June
7 2016, with causing the transmission of a harmful computer
8 program, information, code or command, in violation of Title
9 18, United States Code, Section 1030(a)(5)(A). In order to
10 prove the defendant guilty of Count Seven, the government must
11 prove each of the following four elements beyond a reasonable
12 doubt;

13 First, that the defendant knowingly caused the
14 unauthorized transmission of a program, information, code or
15 command to a protected computer;

16 Second, that the defendant caused the transmission of
17 the program, information, code or command with the intent of
18 damaging or denying services to a computer or computer system;

19 Third, that the defendant thereby caused damage, as I
20 will define the term for you; and

21 Fourth, that the defendant's actions resulted in
22 damage to a computer system operated by the CIA.

23 The first element of Count Seven is unauthorized
24 access of a computer system.

25 The first element the government must prove beyond a

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1 reasonable doubt is that the defendant knowingly caused the
2 unauthorized transmission of a program, information, code or
3 command to a protected computer.

4 This element requires that the government prove that
5 the defendant's transmission of the computer program,
6 information, code or command was unauthorized. Under the
7 statute, this means that the transmission occurred without the
8 permission of the person or entity who owns or is responsible
9 for the computer receiving the transmitted program,
10 information, code or command with. I have instructed you on
11 the definition of a computer in Count Four, and you should
12 apply that definition here.

13 This element also requires that the government prove
14 that the defendant transmitted the program, information, code
15 or command knowingly. A person acts knowingly if he acts
16 intentionally and voluntarily, and not because of ignorance,
17 mistake, accident or carelessness. However, whether the
18 defendant acted knowingly may be proved by the defendant's
19 conduct and by all of the facts and circumstances surrounding
20 the case.

21 Finally, this element requires that the government
22 prove that the defendant transmitted the program, information,
23 code or command to a "protected computer." As relevant to this
24 case, this means that the government must prove that the
25 computer was exclusively for the use of the United States

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1 government.

2 The second element of Count Seven is intent to cause
3 damage.

4 The second element that the government must prove
5 beyond a reasonable doubt is that the defendant caused the
6 transmission of the program, information, code or command with
7 the intent to cause damage, as I will define that term for you.

8 To act with "intent" means to act deliberately and
9 purposefully. That is, the defendant's acts must have been the
10 product of the defendant's conscious objective, rather than the
11 product of a mistake or accident.

12 As a practical matter, then, in order to sustain the
13 charges against the defendant, the government must establish
14 beyond a reasonable doubt that the defendant transmitted the
15 computer program, information, code or command for the purpose
16 of causing damage.

17 The third element is causing damage.

18 The third element the government must prove beyond a
19 reasonable doubt is that by transmitting the program,
20 information, code or command, the defendant caused damage.

21 As defined in the statute, "damage" means any
22 impairment to the integrity or availability of data, a program,
23 a system or information.

24 The fourth element in Count Seven deals with harmful
25 consequences.

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1 The fourth element that the government must prove
2 beyond a reasonable doubt is that the defendant's actions
3 disrupted a computer system used by or for any government
4 agency in furtherance of the administration of justice,
5 national defense or national security.

6 Count Eight: Making false statements.

7 In Count Eight, the defendant is charged with
8 knowingly and willfully making false statements to the FBI,
9 including statements such as (1) denied having any involvement
10 in leaking the classified information; (2) stated that he had
11 never worked on Brutal Kangaroo outside the CIA; (3) stated
12 that he had never removed any classified information from the
13 CIA and took it home. In order to prove the defendant guilty
14 of Count Eight, the government must establish each of the
15 following five elements beyond a reasonable doubt:

16 First, from at least in or about March 2017, up to and
17 including at least in or about November 2017, the defendant
18 made a statement or representation;

19 Second, that this statement or representation was
20 material;

21 Third, the statement or representation was false,
22 fictitious or fraudulent;

23 Fourth, the false, fictitious or fraudulent statement
24 was made knowingly and willfully; and

25 Fifth, the statement or representation was made in a

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1 matter within the jurisdiction of the government of the United
2 States.

3 The first element is statement or representation.

4 The first element that the government must prove
5 beyond a reasonable doubt is that the defendant made a
6 statement or representation to the FBI. There's no distinction
7 between written and oral statements.

8 The second element is materiality.

9 The second element that the government must prove
10 beyond a reasonable doubt is that the defendant's statement or
11 representation was material.

12 A fact is material if it was capable of influencing
13 the government's decisions or activities. However, proof of
14 actual reliance on the statement by the government is not
15 required.

16 The third element is false, fictitious or fraudulent
17 statements.

18 The third element that the government must prove
19 beyond a reasonable doubt is that the statement or
20 representation was false, fictitious or fraudulent. A
21 statement or representation is "false" or "fictitious" if it
22 was untrue when made, and known at the time to be untrue by the
23 person making it or causing it to be made. A statement or
24 representation is "fraudulent" if it was untrue when made and
25 was made or caused to be made with the intent to deceive the

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1 government agency to which it was submitted.

2 The fourth element in Count Eight is knowingly and
3 willfully.

4 The fourth element that the government must prove
5 beyond a reasonable doubt is that the defendant acted knowingly
6 and willfully. An act is done knowingly and it is done
7 purposefully and voluntarily, as opposed to mistakenly or
8 accidentally. An act is done willfully if it is done with the
9 intention of doing so the law forbids; that is, with a bad
10 purpose to disobey the law.

11 The fifth element is jurisdiction of the United States
12 government.

13 The fifth element of Count Eight is that the statement
14 or representation be made with regard to a matter within the
15 jurisdiction of the government of the United States. The FBI
16 is a department of the United States government.

17 To be within the jurisdiction of a department or
18 agency of the United States government means that the statement
19 must concern an authorized function of that department or
20 agency. In this regard, it is not necessary for the government
21 to prove that the defendant had actual knowledge that the false
22 statement was to be used in a matter that was within the
23 jurisdiction of the United States government. It is sufficient
24 to satisfy this element if you find that the false statement
25 was made with regard to a matter within the jurisdiction of the

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1 United States government.

2 I remind you again it is the government's burden to
3 establish every element of each of these counts beyond a
4 reasonable doubt. The government must prove each element of
5 each count beyond a reasonable doubt. If you find that the
6 government has not proved each element of a count beyond a
7 reasonable doubt, you must acquit the defendant on that count.
8 Also, proof of guilt on one count does not establish proof of
9 guilt on another count. You must consider each count, and each
10 element of each count, individually.

11 Count Nine deals with obstruction of justice.

12 Count Nine charges the defendant with obstruction of
13 justice. I have instructed you about the statements allegedly
14 made by the defendant in Count Eight. That instruction applies
15 here as well.

16 In order to prove the defendant guilty of Count Nine,
17 the government must prove each of the following three elements
18 beyond a reasonable doubt:

19 First, from in or about March 2017, up to and
20 including at least in or about November 2017, there was a
21 proceeding pending before a federal court or grand jury;

22 Second, that the defendant knew of the proceeding; and

23 Third, that the defendant corruptly acted to obstruct
24 or impede, or endeavored to obstruct or impede, the proceeding.

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1 For the first element, there's got to be a pending
2 proceeding.

3 The first element that the government must prove
4 beyond a reasonable doubt is that in or about March 2017
5 through November 2017, the date set forth in the indictment,
6 there was a proceeding pending before a federal grand jury;

7 The second element that the government must prove
8 beyond a reasonable doubt is that the defendant knew that such
9 a proceeding was in progress. In order to satisfy this
10 element, you need only determine that the defendant knew on or
11 about the date charged that a grand jury proceeding was in
12 progress.

13 The third element is acted to obstruct or impede.

14 The third element that the government must prove
15 beyond a reasonable doubt is that the defendant did corruptly
16 obstruct or impede, or corruptly endeavored to obstruct or
17 impede, the proceeding.

18 The word "corruptly" simply means having the improper
19 motive or purpose of obstructing justice.

20 Success of the endeavor is not an element of the
21 crime. The term "endeavor" is designed to reach all conduct
22 that is aimed at influencing, intimidating and impeding the
23 jurors or judges or officers. Thus, it is sufficient to
24 satisfy this element if you find that the defendant knowingly
25 acted in a way that obstructed or had the natural and probable

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Charge

1 effect of obstructing justice from being duly administered.

2 Count Ten deals with contempt of court.

3 Count Ten charges the defendant, from at least in or
4 about April 2018, up to and including at least in or about
5 October 2018, with contempt of court. In order to sustain its
6 burden of proving the charge of contempt, the government must
7 establish beyond a reasonable doubt each of the following three
8 elements:

9 First, that the Court issued a protective order that
10 applied to the defendant;

11 Second, that the defendant disobeyed or disregarded
12 that order; and

13 Third, that the defendant acted willfully and
14 knowingly in disobeying the Court's order.

15 The first element is specific court order.

16 The first element of the offense of contempt is that
17 the Court gave a certain order to the defendant. The
18 government must prove beyond a reasonable doubt that the Court
19 ordered the defendant to use certain discovery materials only
20 for the purpose of defending against the charges in this case,
21 and not disclose them to third parties. I instruct you as a
22 matter of law that this order was lawful and proper in every
23 respect; further, that it did not violate any constitutional or
24 other legal rights of the defendant.

25 The second element of Count Ten is knowledge.

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Charge

1 The second element that the government must prove
2 beyond a reasonable doubt is that the defendant disobeyed or
3 disregarded the Court's order. Court orders must be precisely
4 and promptly obeyed. If you find, therefore, that the
5 defendant failed to comply with the Court's order to use
6 certain discovery materials only for defending against the
7 charges in this case, this element of the offense is satisfied.

8 The third element of Count Ten is intent.

9 The third element that the government must prove
10 beyond a reasonable doubt is that the defendant acted knowingly
11 and willfully. "Contempt" is defined as willful disregard or
12 disobedience of public authority. In order to be guilty of
13 criminal contempt, therefore, it is essential that the
14 government establish that the defendant acted knowingly and
15 with the specific intent to disobey or disregard the Court's
16 order.

17 To satisfy this element, the government must prove,
18 beyond a reasonable doubt, that the defendant understood this
19 Court's order and consciously refused to obey that order.

20 I remind you again it is the government's burden to
21 establish every element of each of these counts beyond a
22 reasonable doubt. The government must prove each element of
23 each count beyond a reasonable doubt. If you find the
24 government has not proved each of the elements of a count
25 beyond a reasonable doubt, you must acquit the defendant on

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Charge

1 that count. Also, proof of guilt on one count does not
2 establish proof of guilt on another count. You must consider
3 each count, and each element of each count, individually.

4 In addition to all the elements of each of the charges
5 that I have described for you, for Counts Three, Eight, Nine,
6 and Ten, you must also decide with respect to each of those
7 four elements whether any act in furtherance of the crimes
8 occurred within the Southern District of New York. You do not
9 need to consider whether any act in furtherance of the
10 WikiLeaks counts -- that is, Counts One, Two, Four, Five, Six,
11 and Seven -- occurred in the Southern District of New York.
12 The government and the defendant have agreed to venue in the
13 Southern District of New York on those counts, even though the
14 government alleges that the conduct occurred in the Eastern
15 District of Virginia. The Southern District of New York
16 includes, among other places, Manhattan, the Bronx,
17 Westchester, Dutchess, Putnam, Orange, Sullivan, and Rockland
18 counties. In this regard, the government need not prove that
19 the crime was committed in this district, or that the defendant
20 himself was present here. It is sufficient to satisfy this
21 element if any act in furtherance of the crimes charged in
22 Counts Three, Eight, Nine, and Ten occurred in the Southern
23 District of New York.

24 I should note that on this issue -- and this issue
25 alone -- the government need not prove venue beyond a

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1 reasonable doubt, but only by a preponderance of the evidence,
2 which is a lower standard of proof. A "preponderance of the
3 evidence" means that the government must prove that it is more
4 likely than not that any act in furtherance of the charge you
5 are considering occurred in the Southern District of New York.
6 Thus, the government has satisfied its venue obligations if you
7 conclude that it is more likely than not that any act in
8 furtherance of the crimes charged in Counts Three, Eight, Nine,
9 and Ten occurred in the Southern District of New York. If you
10 find that the government has failed to prove this venue
11 requirement with respect to any of Counts Three, Eight, Nine,
12 and Ten, then you must acquit the defendant on that count.

13 OK. I'm coming now to my conclusion of the
14 instructions; you'll be happy to hear that.

15 You are about to go into the jury room and begin your
16 deliberations. Your function now is to weigh the evidence in
17 this case and to determine whether the government has proved
18 beyond a reasonable doubt that Mr. Schulte is guilty of the
19 offenses charged in the indictment.

20 You must base your verdict solely on the evidence and
21 these instructions as to the law, and you are obliged under
22 your oath as jurors to follow the law as I have instructed you,
23 whether you agree or disagree with the particular law in
24 question.

25 The verdict must represent the considered judgment of

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Charge

1 each juror. In order to return a verdict, it is necessary that
2 each juror agree to it. Your verdict must be unanimous. If
3 you are divided, please do not report how the vote stands, and
4 if you have reached a verdict, do not report that until you are
5 asked to do in open court.

6 When you retire to the jury room, you must have a
7 foreperson. That person will preside over the deliberations
8 and speak for you here in open court. Other than these
9 functions, the foreperson will have no greater or lesser
10 authority than any other juror.

11 It is my custom to select juror No. 1. Ms. Wiker, you
12 are selected as the foreperson of the jury.

13 A final word on your duty to deliberate.

14 It is your duty as jurors to consult with one another
15 and to deliberate with a view toward reaching an agreement.
16 Each of you must decide the case for him or herself, but do so
17 only after impartial discussion and consideration of all of the
18 evidence in the case with your fellow jurors. In the course of
19 your deliberations, do not hesitate to reexamine your own views
20 and change an opinion if you become convinced it is erroneous.
21 But do not surrender your honest convictions as to the weight
22 or effect of evidence solely because of the opinions of your
23 fellow jurors.

24 It is essential that every juror consider all the
25 facts and arguments before reaching a decision. All of you

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1 must be present in order to deliberate. If any juror takes a
2 break during the course of your deliberations, you must stop
3 discussing the case until he or she returns. Similarly, if any
4 juror arrives late in the morning, you may not commence your
5 deliberations until all twelve of you are present.

6 For your deliberations, you will be provided with
7 copies of these instructions that I'm currently giving you and
8 copies of the indictment you. You will also be provided with
9 one verdict sheet on which you will record your verdict.

10 I'm going to send the exhibits received in evidence
11 into the jury room. If you want any of the testimony read, you
12 may also request that. Please remember that it is not always
13 to locate what you might want, so be as specific as you
14 possibly can in requesting testimony or portions of testimony.
15 If you want further explanation of the law as I have explained
16 it to you, you may also request that from the Court. If there
17 is any doubt or question about the meaning of any part of this
18 charge, you may ask for clarification or further instruction.

19 Your requests and any other communications you make to
20 the Court should be made in writing, signed by your foreperson,
21 and given to one of the court security officers that will be
22 watching over you. Bear in mind that you are never to reveal
23 to any person -- not even to me -- how you, the jury, stand,
24 numerically or otherwise, on the questions before you until
25 after you have reached a unanimous verdict.

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1 Your decision must be unanimous, but you are not bound
2 to surrender your honest beliefs concerning the effect or
3 weight of the evidence for the mere purpose of returning a
4 verdict or solely because of the opinion of the other jurors.
5 Discuss and weigh your respective opinions dispassionately,
6 without regard for sympathy, prejudice or favor for either
7 party, and adopt the conclusion that in your good conscience
8 appears to be in accordance with the truth.

9 Now, some of you have taken notes during the trial.
10 As I told you at the beginning of the trial, this is permitted
11 because some people find that taking notes helps them focus on
12 the testimony being given. But your notes are for your private
13 use only, as a way to help you recall the testimony as you
14 begin your deliberations. A juror's notes are not entitled to
15 any greater weight than the recollection of a juror who did not
16 take notes.

17 Your function now is to weigh the evidence in this
18 case and determine whether the government has or has not
19 established Mr. Schulte's guilt beyond a reasonable doubt with
20 respect to the ten counts of the indictment. You must base
21 your verdict solely on the evidence and these instructions as
22 to the law. You are obliged by your oath as jurors to follow
23 the law as I'm instructing you regardless of whether you agree
24 or disagree with the particular law in question. Remember at
25 all times that you are not partisan. You are judges -- judges

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1 of the facts. That's why we're standing up when you come into
2 the courtroom. You are judges. Your sole interest is to seek
3 the truth from the evidence in this case.

4 As to the alternate jurors, Mr. Goldberg and Ms.
5 Gallo, only twelve jurors can deliberate, so I'm going to
6 excuse you now. You notice I said excuse and not dismiss.
7 There may be circumstances where one or more of you will have
8 to be recalled, such as if one of the twelve jurors becomes
9 suddenly unavailable.

10 I want to thank you for your punctuality and your
11 complete attention, your faithful attendance. You paid close
12 attention, but I'm going to ask you not to read or discuss
13 anything. Don't take any interviews with the press, and if we
14 need you, we have your contact numbers. We'll call you and let
15 you know the results.

16 Is there anything else, David, we have to tell the
17 alternate jurors?

18 THE DEPUTY CLERK: No.

19 You're excused now. Just please leave your notes
20 behind. Thank you again for your service.

21 (Alternate jurors excused)

22 THE COURT: I'll see the counsel at sidebar.

23 (At sidebar)

24 THE COURT: Yes.

25 MR. ZAS: Your Honor, we would just renew the

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1 objections we raised at the charge conference.

2 THE COURT: They're preserved.

3 MR. ZAS: We have one more thing, just on the
4 conscious avoidance charge. I'm sorry I didn't notice this
5 before, but I think legally it's not correct. It reads, this
6 is on page 37 of my copy. It says at one point that "the
7 government has to prove that the defendant acted with
8 deliberate disregard whether he was so authorized," authorized
9 to access the computer. But then it has the word
10 "alternatively." "The government may establish its
11 burden..."by proving that the defendant acted with an awareness
12 of a high probability that he was acting without authorization
13 unless the defendant actually believed that he had
14 authorization to access a computer in the manner described in
15 the indictment."

16 It's not really correct to say it's alternatively.
17 It's that the defendant was aware of a high probability and
18 consciously decided not to find out. So we would just object
19 to the way it was phrased as well as the prior objection we
20 raised, which was that there was not a sufficient factual
21 predicate for it in this case.

22 THE COURT: It's preserved.

23 Anything else?

24 MR. DENTON: I think it's pretty clear that you're
25 simply saying put a different way, which is an accurate

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1 description of what deliberate disregard means. It's not an
2 alternative theory.

3 THE COURT: I'm content to leave it the way it is.

4 MR. ZAS: OK. Our objection is noted.

5 Judge, on page 59, we'd also object to one line that
6 told the jury that its "sole interest is to seek the truth from
7 the evidence in this case," and we think that dilutes the
8 burden of proof to suggest that they're out to find out what
9 really happened rather than whether the government sustained
10 its burden.

11 THE COURT: That's pretty much a standard charge.

12 MR. ZAS: I take it you're overruling my objection.

13 THE COURT: Yes, I am. Overruled.

14 MR. ZAS: I think that's all we have.

15 THE COURT: OK. Just so the record is clear, the
16 objections that you had to the charge set forth at the charge
17 conference are all preserved.

18 MS. SHROFF: Thank you, your Honor.

19 MR. ZAS: This a good time for the record to make sure
20 that we still seek the mistrial. The motion is still pending
21 and hasn't been ruled on. I want to make sure it's clear that
22 we are still requesting that relief.

23 THE COURT: OK.

24 Anything from the government?

25 MR. DENTON: Nothing from the government.

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1 THE COURT: Mr. Branden.

2 MR. BRANDEN: Nothing, Judge.

3 (In open court)

4 THE COURT: David, swear the CSO.

5 (Court security officer sworn)

6 THE COURT: Before you start your deliberations --
7 it's 3:20, and I don't know what you want to do today -- but
8 I'd request on behalf of all the parties that you go in there
9 and try to figure out what schedule you want to follow through
10 your deliberations, what time you want to start the day, what
11 time you want to go home at the end of the day, so we can be
12 around to serve any needs that you have. We will be staying
13 here in the courtroom awaiting your verdict, or staying in the
14 courthouse awaiting your verdict. So if you can go in there
15 now and try to agree upon a schedule, give the schedule to the
16 CSO, and then deliberate as long as you want or short as you
17 want. It's up to you. All right? You're in the hands of the
18 CSO.

19 (At 3:21 p.m., the jury retired to deliberate upon a
20 verdict)

21 THE COURT: We'll take care of submitting the jury
22 instructions and the verdict sheet and the indictment to the
23 jurors.

24 Do you have the exhibits ready?

25 MR. LAROCHE: Yes, your Honor.

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1 THE COURT: Are you ready too, Ms. Shroff?

2 MS. SHROFF: No. I haven't seen the computer because
3 we wanted to see if there were any markings of classification
4 on the computer itself.

5 THE COURT: When I say exhibits, I mean hard copies of
6 the documents. I'm not going to send the computer in.

7 MS. SHROFF: OK.

8 THE COURT: I'm talking about the pieces of paper.

9 MS. SHROFF: Those we will agree to.

10 THE COURT: Have you agreed on that?

11 MS. SHROFF: Yes.

12 THE COURT: OK. You've seen it.

13 MS. SHROFF: Yes.

14 THE COURT: OK. We'll send those in too.

15 MR. LAROCHE: Yes, your Honor.

16 THE COURT: Thanks. Thank you very much.

17 MR. LAROCHE: Thank you, your Honor.

18 MS. SHROFF: Thank you, your Honor.

19 MR. LAROCHE: Your Honor, one question. Should the
20 parties report in the morning to the courtroom, or is it
21 sufficient that we're in the courthouse?

22 THE COURT: Well, we'll get a note, and presumably
23 they'll let us know, but I've always felt that the U.S.
24 Attorney's Office -- you're staying in your offices on the
25 fifth floor?

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1 MR. LAROCHE: Yes, your Honor.

2 THE COURT: Yes.

3 MR. LAROCHE: Thank you.

4 THE COURT: I don't know where Ms. Shroff is planning
5 on staying.

6 MS. SHROFF: I don't know. Just for old time's sake,
7 I thought I'd just sit in the SCIF.

8 THE COURT: OK. It's a strange place to hide.

9 MR. ZAS: Thank you, your Honor.

10 THE COURT: Thank you.

11 (Recess pending verdict)

12 THE DEPUTY CLERK: Counsel, Ms. Shroff, we got a note
13 from the jury. It says, "We have decided to work 9 a.m.
14 through 4 p.m., including Fridays."

15 This will be marked as Court Exhibit 5, and it's
16 received as of today, March 2.

17 The Court will be submitting to the jury 12 copies of
18 the jury charge, three to four copies of the indictment, one
19 verdict sheet with a yellow envelope, and a few extra jury
20 notes for the jury.

21 MR. LAROCHE: Thank you.

22 THE DEPUTY CLERK: And all the exhibits the parties
23 have stipulated to. And the exhibits are to stay in the jury
24 room at all times.

25 (Adjourned to March 3, 2020, at 9:00 a.m.)